

**UNSUITABLE LITIGATION:  
OVERSIGHT OF THIRD-PARTY LITIGATION  
FUNDING**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON  
OVERSIGHT AND ACCOUNTABILITY**  
**HOUSE OF REPRESENTATIVES**

ONE HUNDRED EIGHTEENTH CONGRESS

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# **UNSUITABLE LITIGATION: OVERSIGHT OF THIRD-PARTY LITIGATION FUNDING**

**September 13, 2023**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY  
*Washington, D.C.*

The Committee met, pursuant to notice, at 10:35 a.m., in room 2154, Rayburn House Office Building, Hon. James Comer [Chairman of the Committee] presiding.

Present: Representatives Comer, Jordan, Gosar, Foxx, Grothman, Palmer, Higgins, Sessions, Biggs, Mace, LaTurner, Donalds, Armstrong, Perry, Timmons, Burchett, Greene, McClain, Boebert, Fry, Edwards, Burlison, Raskin, Norton, Connolly, Krishnamoorthi, Khanna, Ocasio-Cortez, Porter, Brown, Stansbury, Garcia, Frost, Lee, Crockett, Goldman, and Moskowitz.

Chairman COMER. The Committee on Oversight and Accountability will come to order, and I want to welcome everyone.

Without objection, the Chair may declare a recess at any time.

I recognize myself for an opening statement.

Today, we examine a growing concern in our Nation's legal system. Millions of lawsuits are filed each year. These suits range from simple disputes between neighbors to complex, multi-district litigation spanning the entire country. Many of these lawsuits have significant merit, requiring serious analysis by courts, but some are frivolous as well. With the millions of cases being brought each year, our courts have become overburdened, creating delays, and making it difficult and expensive for many litigants to prosecute their cases. The complexity and expense of some of these cases makes litigation funding important. In fact, for some, litigation funding is necessary to enable them to pursue justice through the legal system, but there are some concerning trends in how litigation is funded.

The spread of untraceable and undisclosed funding of lawsuits across the country is raising significant ethical and legal questions. For example, many lawsuits are funded by progressive activists or private equity seeking to hijack America's legal system to implement their policy desires or make a quick buck. Lawsuits that impact the mining of critical minerals, development of new medications, energy production, and our national security, these lawsuits raise concerns about attorneys' ethical duties, whether the proper

parties are at the negotiating table, and whether litigants are being hurt by limitations on the funding they receive. They raise concerns about whether attorneys are acting in the best interests of their clients or those who they are receiving funding from. They raise concerns about whether the funders should be included at the negotiating table during settlement talks. They raise concerns that some litigation financiers are not acting in the best interests of the litigants.

We know that activist groups use this funding to push policies that they could not enact through the legislative process. Some left-wing groups funnel millions to law firms to sue companies across the country on questionable legal grounds. They are trying to use the courts to put these companies out of business or limit their ability to bring new products to market. These activist groups will find plaintiffs and pour millions into claims against energy, mining, and manufacturing companies to the detriment of consumers, innovation, national security, the workforce, and even to plaintiffs themselves, all in the name of political activism.

These groups know that their tactics and goals are too extreme for the American people to support, so rather than use the electoral process, they are implementing their agenda through litigation against both the public and private sectors. Other groups are entering into funding agreements with plaintiffs' attorneys where they pay to support litigation in exchange for a significant portion of the money awarded should the plaintiffs win. In some cases, these outside groups can effectively override a settlement agreement if they do not like the payoff amount.

In fact, a recent study by the Institute for Legal Reform found that for every dollar paid in damages through tort litigation, a meager \$0.53 actually found its way into the rightful pockets of the claimants. When American companies are under threat of frivolous litigation, those companies must set aside hundreds of millions of dollars to fight against claims from these groups, and the American people are then affected when companies are forced to offset the cost of litigation by raising prices. The mass torts litigation sector raked in an astonishing \$443 billion in 2020 alone, the equivalent of 2.1 percent of the entire GDP of the United States.

Today, we are going to hear from American industry to see how unnecessary litigation can freeze essential sectors of the economy and hurt consumers. We also will hear how activist groups use sue-and-settle tactics to encourage government agencies to regulate well beyond the laws Congress passed for them to administer. These suits cost taxpayers unknown sums in attorney fees, settlement payouts, and economic impacts to the affected industries.

Now let me be clear: agencies should not be conducting rule-making via litigation, and activist groups should not be legislating via litigation. Today is a first step to identifying how pervasive third-party litigation funding is and how deep the abuses go. I look forward to hearing the testimony of our witnesses and to discussing how we can ensure fairness in our legal system. With that, I now yield to Ranking Member Raskin.

Mr. RASKIN. Thank you, Mr. Chairman, and thanks to our witnesses for being here today, especially Professor Clark, who flew all the way from St. Louis on short notice.

Mr. Chairman, I spent my recess traveling across America. I was in 10 states, including your beautiful Kentucky, and one thing I found is that all over America, people are in an uproar over the money that billionaires are spending to influence justices on the U.S. Supreme Court. Americans see that personal gifts to justices from right-wing billionaires sugar daddies, like Harlan Crow, and Federalist Society dark money expenditures are fundamentally perverting judicial ethics and undermining justice and the rule of law.

Now apparently, responding to the national outcry over this ethics crisis on the Court, our colleagues have called a hearing today about the influence that wealth exerts on the justice system, but they have gone off on a surprising and bizarre tangent. The problem, they say, is not the way the public is harmed when billionaires bankroll the private lives of ethically challenged Supreme Court Justices. The real problem is that giant corporations are harmed when Americans, injured by toxic torts or environmental crimes, receive contributions from donors to help them bring personal injury or class action lawsuits. In other words, while Supreme Court Justices are jetting all over the world on fancy private family vacations paid for by right-wing billionaires, or collecting hefty cash gifts from those billionaires for their personal museums and family members' private school tuition payments, the GOP says the real problem in our legal system is that too many victims of corporate wrongdoing are finding access to the courts in the first place.

Now, we say justice is blind because the Greek statue for justice wears a blindfold. In solving cases, Justices are supposed to be blind to wealth and poverty, personal friendship, and political affiliation. A poor person who has never met a judge must be treated the same by the courts as Harlan Crow, the real estate tycoon chum of Justice and Mrs. Clarence Thomas, who had a case before the Supreme Court and who has given the Thomases lavish personal gifts, like week-long luxury travel on his super-yacht and private jets, and generous money payments for family tuition over a period of 20 years ever since Thomas joined the Court. A collector of not-so-fine art created by dictators who actually owns and displays two paintings done by Adolf Hitler, Mr. Crow donated \$105,000 to the Yale Law School in 2018 for another painting he desires, writing a check to the "Justice Thomas Portrait Fund."

But Justice Thomas is not unique. He is just emblematic of the collapse of legal ethics across the street. Justice Alito took a long fishing trip with a hedge fund magnate who has had business before the Supreme Court 10 times in the last 15 years. Neither justice recused themselves in the relevant cases or made any relevant timely disclosures.

Justice is supposed to be blind to the blandishments of money and class power. It is only supposed to see the facts and the law, but in the Roberts Court, judicial vision is clouded everywhere by dollar signs and luxury power trips. The facts and the law are barely visible when it comes to the rights of workers trying to organize a union, or poor women seeking abortions, or consumers injured by adhesion contracts and corporate rip-offs. Justice is a rich man's game in this Court of billionaires. The Bill of Rights has

mostly been left in the dust. On the Roberts Court, justice is indeed blind but only to ethics itself. It is deaf to the pleas of women and working people, and it is dumb in its refusal to see how it has destroyed its own legitimacy in the eyes of the public. It is certainly not mute, however, as Justices Alito and Thomas vociferously defend their jet-setting lifestyles in shockingly intemperate terms.

If we are going to return to equal justice under law, as it is written over the entrance to the Supreme Court, if we are to make justice blind to the wealth and the identity of the parties in the courtroom, then our Justices must be held to the highest ethical standards. And yet, amazingly, the Justices are not even subject to the basic code of conduct for United States Judges that all other Federal Judges are subject to. The nine Justices are, in fact, not bound by any ethical standards at all, much less the comprehensive ethics code that applies to all the other Judges. Their decisions can affect or destroy the rights of all Americans, but the Justices refuse to abide by any written ethical code. They decide on their own if their work is impaired by a real or apparent conflict of interest, a terrible system which cuts against the key principle of justice that Madison articulated in the Federalist Papers: “No man is allowed to be a judge in his own cause in his own case.”

The highest court in our land now has the lowest ethical standards. This is the crisis we should be discussing today, but our colleagues have instead called a hearing to assert that it is just too easy to haul corporations into court when they violate other Americans’ rights. The third-party litigation funding under attack today is the only way that a lot of victims of corporate misconduct can even get into court. Do our colleagues really want to make it illegal now to receive contributions to vindicate your rights?

I could understand if they were saying that all the present Federal Rules of Civil Procedure against frivolous, vexatious, and groundless litigation were not working. I could understand if they were arguing that Rule 11 sanctions against baseless lawsuits needed to be expanded or fortified, but that is not what they are saying. They are not citing any kind of increase in frivolous or meritless litigation, nor are they arguing that current sanctions do not work, those sanctions are working just fine. No, they are looking for ways to reduce the prosecution of merit-worthy and successful lawsuits against actual corporate wrongdoers, and by pulling the rug out from underneath actual tort victims, they hope to keep plaintiffs from even getting into court.

The GOP wants to dramatically reduce accountability and liability for corporations that flood our country with opioids to make obscene profits, corporations that poison our communities with asbestos or lead and other dangerous carcinogens, and corporations that inflict lung disease, mass oil spills and other lethal injuries on American. Our colleagues seem confused. No one has a right to bribe judges or load them up with fancy gifts, but people do have every First Amendment, due process, and Equal Protection Right to raise money to make their case in court. The courts are not just there for rich people who can write themselves a big check. This is the same reason people have a right to give and receive campaign contributions for public offices, not just for the independently wealthy.



Victims bringing these lawsuits, especially those who are low-income or unable to work because they are sick or injured, often cannot afford to bring the lawsuits at all without financial help from other citizens. If their lawsuits have no merit, they should be thrown out, but if they have merit, then we should all be grateful that they are working to make society safer by stopping the wrongdoers before they commit more wrongs against society.

Many landmark cases establishing the basic rights of Americans have been funded by contributions from outside groups: *Brown v. Board of Education*, *Loving v. Virginia*, *U.S. v. Windsor*. The corporate interests represented on the panel today who are attacking this basic right are here for an obvious reason: they do not like paying damages when their victims prove their rights have been violated in court. Johnson & Johnson has had to pay billions of dollars for its central role in the opioid epidemic and billions more to tens of thousands of people who developed cancer because of the country's dangerous talcum powder. Mining and offshore drilling companies have had to pay billions of dollars for poisoning communities' land and water and causing irreparable harm to human health. Perhaps one of the biggest environmental cases in the history of United States, oil company, BP, agreed to pay \$20 billion for damages caused by the Deepwater Horizon oil spill in the Gulf of Mexico.

One can only regard with amazement the fact that our colleagues are in such a hurry to promote the grievances of these big tortfeasors and wrongdoers, that they do not even pause to consider that there are hundreds of millions of dollars in right-wing, third-party litigation financing regularly bankrolling anti-choice, anti-LGBTQ, anti-gun safety lawsuits, among many others. Well-funded right-wing networks like the Pacific Legal Foundation, the Koch Network, the Judicial Crisis Network, have poured hundreds of millions into remaking America through the courts on issues ranging from attacking public school curricula, to opposing compulsory union dues, to repealing the Consumer Financial Protection Bureau.

The Alliance Defending Freedom and other right-wing groups brought the *Dobbs* case and are working to completely eliminate access to abortion for all Americans that is their right. Our colleagues do not complain about that. In fact, they do not even mention it. Are they willing to sacrifice the rights of their third-party litigation financiers on the right, or are they just not serious about this whole thing and simply looking for another catchy way to distract everyone from Donald Trump's 91 different criminal charges in four indictments across the land?

Everyone knows that a fish rots from the head down, and everyone knows what stinks to the high heavens in the judicial system today is, alas, the Supreme Court itself. Let us focus on where the corruption of justice is actually taking place today. Thank you, Mr. Chairman, and I yield back.

Chairman COMER. The gentleman yields back. And I want to remind everyone, we are not asking Congress to stop third-party litigation. We are here today to learn from expert witnesses about possible abuses in our court system. With that, I am pleased to welcome our witnesses for today, and I apologize if I mispronounce

these names—I am notoriously bad about that—Maya Steinitz, Erik Milito, Julie Lucas, Aviva Wein, and Kathleen Clark.

Our first witness is Maya Steinitz, who is a professor at Boston University School of Law. Our next witness is Erik Milito, who is president of the National Ocean Industries Association. Then we had Julie Lucas, Executive Director at MiningMinnesota. Next is Aviva Wein, Assistant General Counsel at Johnson & Johnson, and our last witness today is Kathleen Clark, a Professor at the Washington University of St. Louis School of Law. We look forward to hearing what each of you have to say about today's important subject.

Pursuant to Committee Rule 9(g), the witnesses will please stand and raise their right hands.

Do you solemnly swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[A chorus of ayes.]

Chairman COMER. Let the record show that the witnesses all answered in the affirmative. We appreciate all of you being here today and look forward to your testimony.

Now, let me remind the witnesses that we have read your written statements, and they will appear in full in the hearing record. Please limit your oral statements to 5 minutes. As a reminder, please press the button on the microphone in front of you so that it is on, and Members can hear you. When you begin to speak, the light in front of you will turn green. After 4 minutes, it will turn yellow. When the red light comes on, your 5 minutes has expired, and we would ask that you please wrap up.

I recognize Ms. Steinitz to please begin her opening statement.

**STATEMENT OF MAYA STEINITZ  
PROFESSOR OF LAW  
BOSTON UNIVERSITY SCHOOL OF LAW**

Ms. STEINITZ. Thank you. Chairman Comer, Ranking Member Raskin, and Members of the Committee, thank you for inviting me to testify today. My name is Maya Steinitz, and I am a Professor of Law at Boston University Law School. I appreciate the opportunity to share with you some of what I have learned over nearly 15 years of studying and writing about the phenomenon of third-party litigation finance.

Third-party litigation funding is a utility. It can be well-used or abused depending on the context. It can be beneficial to individuals, to small and large businesses, and to the public. It can also be harmful to individuals, to small and large businesses, and to the public. In terms of impact litigation brought to advance an ideological position or policy goal, third-party funding can and, to my understanding, has been used to assist plaintiffs pursuing both liberal and conservative causes. Like the rest of the finance industry, whether the good that litigation funding can serve ultimately outweighs the bad will depend largely on whether and how well it is regulated.

Third-party funding is transforming the trajectory of individual cases, for example, by determining which cases are brought, how long they last, and how much they settle for. For this reason, it can

also affect the work of the judicial branch at both the state and Federal level. It is also affecting the practice of law. It could help increase efficiency and lower the cost of legal services available to Americans, but it can also introduce conflicts of interest between lawyers and clients that did not use to exist, especially when lawyers and funders have ongoing relationships that may have started before a given client's case commenced or may continue thereafter.

Therefore, the systemic effects of litigation funding implicate democracy at large, affecting as it does all of civil justice, an entire branch of government and the structure and core tenants of the legal profession and of the attorney-client relationship which is a central and, therefore, protected relationship in a free society. Third-party funding's proper regulation, neither overregulation, nor under regulation, and regulation of the right kind should, therefore, be a matter of broad concern cutting across usual political divisions. Litigation finance can help increase access to justice that parties cannot afford to bring their disputes to court, such as individuals, startup companies, and small businesses.

The ability to acquire financing can level the playing field between such under-resourced players and significantly better-resourced opponents. Litigation funding can also serve as a form of corporate finance for small and large businesses, allowing them to manage balance sheets and to obtain operating capital during a time when litigation otherwise limits access to such capital. By shifting the risk of litigation or assigning claims altogether, a corporate claimant can reduce the impact of that litigation on normal business activities.

While empirical data about third-party funding is extremely limited, the downsides of third-party funding are well understood and increasingly documented. The ways litigation funding can structurally create conflicts of interest between lawyers and their clients protracts certain litigation, create incentives to bundle non-meritorious cases with meritorious cases when cases are aggregated rather than pursued individually, affect defendants' due process rights, and, of course, the risk of predatory financing practices are all well understood.

While litigation finance is a relatively new industry, it is part of and its functions overlap with established industry that we in the U.S. know well how to regulate: the finance and banking industry, the legal industry, and the insurance industry. In those industries, there are various ethical requirements, context-specific disclosure requirements, and protections against predatory practices. I welcome your questions.

**STATEMENT OF ERIK MILITO  
PRESIDENT  
NATIONAL OCEAN INDUSTRIES ASSOCIATION**

Mr. MILITO. Chairman Comer, Ranking Member Raskin, and Members of the Committee, thank you for the opportunity to testify. I am Erik Milito, President of the National Ocean Industries Association, or NOIA. NOIA represents all segments of the offshore energy industry, including oil and gas, wind, minerals, and carbon sequestration. For the foreseeable future, our economy will depend upon affordable and reliable supplies of oil and gas. The U.S. Gulf

of Mexico oil and gas sector supports more than 350,000 good-paying jobs throughout the country and produces among the lowest carbon intensity barrels in the world.

Currently, global oil demand is near record levels at more than 100 million barrels per day. Various scenarios forecast global oil consumption through 2050 and beyond. Nearly all of them predict substantial oil production will be necessary through at least 2050. The empirical data in our industries' track record underscore the significance of the U.S. offshore region, particularly the Gulf of Mexico and securing these vital energy resources.

However, our industry faces considerable obstacles stemming from excessive litigation and sue-and-settle agreements. Opponents of American energy projects have managed to bypass Congress and their public regulatory process through what has become regulation through litigation. While litigation is an important tool for holding Federal agencies accountable to their statutory responsibilities, its misuse to disrupt energy development ultimately harms the American consumer more than anyone else, and simply shifts production to foreign suppliers. Litigation abuse imposes a real barrier to America's energy production potential at a time when it is needed more than ever, with inflation driving up the cost of everything for Americans, including gasoline at the pump.

One of the most recent sue-and-settle examples between activists and the Administration involves the Rice's whale. The Rice's whale is a species already protected under both the Endangered Species Act and the Marine Mammal Protection Act. However, activist groups sued the National Marine Fisheries Service, or NMFS, over whale protections, resulting in a stipulated stay agreement which proceeded without public or congressional input. The agreement locks away millions of prime Gulf of Mexico acres from oil and gas development and imposes unwarranted vessel restrictions based upon insufficient scientific support and a failure to consider the economic and national security impacts.

Most significantly, the government itself is contradicting its own findings, that expansion of the protected area for the whale is, in fact, not justified. In a proposed rulemaking from January of this year, NMFS determined that expansion of the protected area for the whale is not warranted stating, "Therefore, while we expect that some individual Rice's whales occur outside the core habitat area, and/or that whales from the eastern Gulf of Mexico occasionally travel outside the area, the currently available data support NMFS determination that the area currently considered core habitat is an adequate representation."

Expanding the Rice's whale critical habitat to include areas where there is only negligible or no presence of the whale is contrary to the science and dilutes conservation resources that should be going toward protecting actual habitat areas. According to NMFS, only a single Rice's whale has been observed in this expanded area. An additional survey effort was conducted for the expanded area after the 2017 sighting, and no additional sightings were recorded. The additional mitigation measures include narrower transit windows that will naturally increase vessel traffic in daylight, carrying added risks. Vessels will idle, potentially for hours, waiting for daylight or better visibility. There will be un-

avoidable and, yet again, unnecessary increases in emissions, undermining the Gulf's status as one of the lowest carbon emission basins in the world.

The Federal Government is also considering expanding mitigation measures to encompass all Gulf maritime vessel traffic, including cargo vessels, cruise lines, and fishing boats. This will initiate a chain reaction of delays. As vessels finally reach port past the bottlenecks created by transit windows, new bottlenecks will emerge as everyone rushes to unload goods on trains and tracks simultaneously, delaying the distribution of critical goods throughout the Nation.

Wildlife protection is a universal goal of every Gulf Coast resident, the industry, and the workers of our industry, yet the Administration's approach lacks transparency and excludes the voices of broad-based stakeholders and experts. Thank you, and I look forward to your questions.

**STATEMENT OF JULIE LUCAS  
EXECUTIVE DIRECTOR  
MININGMINNESOTA**

Ms. LUCAS. Chair Comer, Ranking Member Raskin, and Members of the Committee, my name is Julie Lucas. I am here today from the land of 10,000 Lakes, Lake Superior, the Boundary Waters Canoe Area Wilderness, and the headwaters of the Mighty Mississippi. In Northern Minnesota, home first and still to the Ojibwe people, we are defined by our clean, plentiful water, and we hold immense pride in that identity. Our identity has also been shaped by the land beneath our feet and the abundant minerals found within it.

I am the Executive Director of MiningMinnesota, a coalition of industry leaders who advocate for safe, responsible, and well-regulated mining in our state. I am here today to share our region's hope for the development of a mineral resource essential to building a clean energy economy, a resource containing copper, nickel, cobalt, platinum, palladium, and gold. Much as the Nation has depended on Minnesota for iron ore, our country could turn to Minnesota-sourced minerals to build the batteries, windmills, solar panels, and other products needed to achieve carbon-free energy goals. These resources would be under development today if not for extended, repeated litigation, and continued appeals focused on delaying this progress.

We currently have three proposed critical minerals projects in Minnesota. These projects are all in different phases of development and include NewRange Copper Nickel near the communities of Aurora and Hoyt Lakes, Twin Metals Minnesota in Ely and Babbitt, and Talon Metals in Tamarack. These are small, rural communities with only Ely topping 3,000 people. The near constant act of litigation or threat of other legal challenges does more than impact a project. It negatively impacts our communities.

The first impact is a loss of funding for local communities and local schools. Minnesota law requires non-iron mining companies to pay an additional tax as soon as projects are permitted and able to begin construction. With those millions of dollars in taxes going directly to support local communities and schools, litigation delays

those investments. The second impact is on students statewide. School trust lands are publicly managed lands, established within Minnesota State Constitution with the sole goal of generating revenue for public schools throughout the entire state through different means, including mineral development. The third impact is uncertainty, uncertainty about our future. As lawyers battle over how a process-focused decision was or was not made or attempt to use the courts to make new policy, people in our communities are forced to make and consider other decisions. Should a town build additional housing for new workers? Should childcare opportunities be expanded? Will a recent graduate have to leave their beloved community behind to seek employment hundreds of miles away?

As neighbors to propose projects, we value stringent environmental review and permitting processes. We recognize the importance of a litigation process as originally envisioned to ensure regulators and regulated entities are held accountable to protecting and minimizing the effects on our air, water, and our land. However, the litigation process that was developed to protect communities like ours is being abused today. Too often, it is solely used to delay projects and drain the funding of companies with the hope investors will give up and leave Minnesota. These actions are not designed to make a project stronger. They are actions by groups who will never support or accept that not only do we need Minnesota's minerals, but that there are proven and effective ways to realize the potential of this resource.

As time and money is increasingly invested into litigation and legal support teams, our communities are held in limbo. Too often we watch in frustration as our Nation looks overseas for minerals we could provide. The environmental review and permitting processes allow for extensive community engagement and multiple checkpoints along the way. Trust must be restored in our regulatory process. If there are known flaws to be challenged on a legal basis, they are known prior to or immediately following issuance of permits. The timeline for filing lawsuits could be shortened significantly while still meeting the intent and spirit of the laws as originally designed. Too often they are strategically filed at the last moment and nearly 5 years after a decision to maximize delay.

If our Nation is going to drive the unprecedented demand for these minerals, we must be responsible for our own consumption and we cannot be afraid to say yes: Yes, to a low-carbon future, yes to protection of natural resources, yes to high labor standards, yes to our communities, and yes to accessing these minerals domestically. Thank you, and I look forward to your questions.

**STATEMENT OF AVIVA WEIN  
ASSISTANT GENERAL COUNSEL  
JOHNSON & JOHNSON**

Ms. WEIN. Chairman Comer, Ranking Member Raskin, and Members of the Committee, my name is Aviva Wein, and I am an Assistant General Counsel at Johnson & Johnson, and I lead our Litigation Policy and Risk Mitigation Group. I applaud your Committee's efforts to shine light on the growing threat to our civil justice system and the U.S. economy. Outside money and influence over mass tort litigation are compromising the ability of both plain-

tiffs and defendants to achieve justice, and Federal courts are struggling to manage the barrage of cases fairly and efficiently. These concerns threaten the integrity of the civil justice system and are among the most significant challenges facing companies that manufacture critical lifesaving and life enhancing medicines and medical devices.

I appreciate your inviting me here to testify today. My views are informed by my work, first at a law firm and then for the past approximately 11 years handling product litigation for Johnson & Johnson.

There may have been a time when tort litigation was about individuals seeking out a lawyer to vindicate his or her rights and to recover for wrongfully caused harms. That is how civil justice is supposed to work. Today's mass tort system, however, works in reverse. Lawyers develop a tort theory, recruit investors, use that money to advertise for plaintiffs, work with paid experts to publish junk science, and amass thousands of claims without proper vetting. All of this has one intended result: profit to the lawyers and the investors. That is not how the civil justice system should work. It turns mass tort litigation into a money play, driven, funded, and distorted by lawyers and investors regardless of the merits of the claims they assert.

What makes this litigation possible is the involvement of hedge funds and other litigation funders. Spending by litigation funders in the United States has been estimated at \$2.3 billion to \$5 billion per year, and 70 percent of this capital is reportedly invested in what they call portfolio or mass tort litigation. Yet typically, litigation financing is largely unregulated, and such investments are hidden from courts and the parties, even when lawyers need investors' approval to settle cases.

So how does this outside money distort justice? First, it funds sophisticated media campaigns, urging people to call or click for a chance at a jackpot. All day, every day, we are bombarded on television, our tablets, our phones with ads, urging us to sue. It has been estimated that nearly a billion dollars is spent per year on advertising on TV ads, soliciting people to file lawsuits. Second, these ads generate massive numbers of insufficiently vetted claims. People call or click, fill-out forms, and claims are filed with little, if any, vetting. Often the claims are collected by lead generators and sold to law firms who file them.

The lawyers have never met or spoken to these clients. They just get a name and file a claim without knowing the basics. Did they use the product? Did they suffer the alleged injury? As a result, according to the Federal Advisory Committee on Civil Rules, 20 to 30 percent of mass tort claims are wholly unsupportable. In some litigations, this may be as high as 40 to 50 percent. Let us pause there. Forty to 50 percent of all mass tort claims should never have been filed, they are meritless.

Third, judges are increasingly recognizing that the scientific basis for entire mass torts may be largely a figment of this business model. The Wall Street Journal reported that the lab behind studies alleging Zantac and other products contain dangerous levels of cancer-causing chemicals had ties to plaintiff lawyers. 50,000 claims were generated, but then were dismissed after it was uncov-

ered the lab's testing methods actually generated the alleged cancer causing chemical, but the damage was already done. Zantac was recalled from the market.

Finally, aside from the obvious impact on U.S. businesses, large and small, this mass tort business model driven by this outside funding has other significant consequences. The MDL system which Congress enacted to address mass torts is overwhelmed and breaking down. Today, upward of 70 percent of all civil actions in our Federal Courts nationwide are mass tort lawsuits. Facing thousands of cases, MDL judges tend to prioritize settlement rather than rigorously reviewing the plaintiffs' theories or winnowing claims.

Further, ads that mislead about healthcare decisions have harmed people. The American Medical Association and AARP have cautioned that fear-mongering and lawsuit ads is dangerous and frightening. Sadly, these components of a modern-day mass tort system have little to do with vindicating rights or compensating consumers. Plaintiffs have become mere pawns in a game. The primary beneficiaries are plaintiffs' counsel and their investors. The losers are the courts, American businesses, consumers, and the people seeking redress.

Again, I very much appreciate the opportunity to provide my experiences and perspectives, and I look forward to the questions.

**STATEMENT OF KATHLEEN CLARK  
PROFESSOR OF LAW  
WASHINGTON UNIVERSITY OF ST. LOUIS SCHOOL OF LAW**

Ms. CLARK. Chairman Comer, Ranking Member Raskin, Members of the Committee, thank you for inviting me to testify today. I am here to talk about ethics. As a law professor and a lawyer, most of my work over the last 30 years has focused on legal and government ethics. I have taught courses on these subjects and written articles about them. I have conducted ethics trainings and provided ethics advice to government officials and agencies.

This hearing is about third-party litigation funding, a practice that currently affects a small but growing portion of court cases. As a matter of legal ethics, third-party litigation funding does pose ethical risk such as conflicts of interest. At the same time, this funding mechanism can benefit clients, particularly those who would not otherwise be able to access our courts. While ethics issues do arise in this context, in my professional opinion, these issues are nowhere near the top of the list of significant ethics concerns facing our courts. Instead, I would place at the top of that list the ethics crisis currently facing the U.S. Supreme Court.

According to media reports, certain Supreme Court Justices have repeatedly accepted lavish gifts from wealthy patrons, refused to recuse from cases affecting those patrons, and then failed to disclose those gifts and other transactions as required by the Ethics and Government Act. The Court's refusal to address these revelations and its failure to incorporate basic and widely accepted ethical safeguards indicate that the Supreme Court has a very significant ethics problem. Let me provide just a few examples.

Supreme Court Justice Clarence Thomas accepted extravagant gifts from Harlan Crow, including an Indonesian vacation, appar-



ently valued at hundreds of thousands of dollars, and accepted private school tuition valued at tens of thousands of dollars for Thomas' grandnephew, for whom Thomas, as legal guardian, was responsible. In addition, Justice Thomas allowed Harlan Crow to purchase several properties that Thomas co-owned, including the home where Thomas' mother lives. Even more troubling, Thomas failed to disclose these gifts and the property transaction as he was legally required to do by the Ethics in Government Act. In fact, Justice Thomas has filed inaccurate financial disclosures more than a dozen times, correcting his disclosures only after journalists or non-government organizations have publicized his inaccuracies. And Justice Thomas is not alone. Justice Alito also has accepted private jet flights, for example, from billionaire financier Paul Singer, and then failed to disclose those flights, as required by law, and then Alito failed to recuse from a Supreme Court case involving Singer.

These are not just missteps of individual Justices. Instead, this pattern of behavior reflects institutional failure at the Supreme Court, which has refused to adopt measures that could prevent ethical missteps and hold accountable those who violate ethics standards. The Court does not even have the same ethics standards that apply to lower court judges. Rather than vilifying individual Justices, I want to focus on the need for an institutional response, the need for robust ethics standards and accountability mechanisms to apply at the Supreme Court. Our Nation deserves a Court that is worthy of the public's trust, and Congress has the constitutional authority to help make that happen.

Thank you for considering my testimony. I look forward to your questions.

Chairman COMER. Thank you. Now we will begin the question phase. The Chair recognizes Mr. Palmer from Alabama for 5 minutes.

Mr. PALMER. I thank the Chairman and thank the witnesses for being here. Just listening to testimony raises some serious concerns. I really appreciate testimony of Ms. Wein about this massive advertising campaign by plaintiff attorneys and how it has impacted science. I think it is leading to some major problems for the national economy but also for our national security because it is denying us access to certain key materials.

But also, I would like to address the testimony of Ms. Lucas about how these lawsuits are impacting the states' ability to self-govern. Our Constitution reserves most of the powers for government to the states, and is it your experience in Minnesota that you have got outside groups and, in some cases, Federal agencies basically usurping the authority of the state and overturning state laws in regard to the management of your own resources?

Ms. LUCAS. Thank you for the question. In Minnesota, some of our environmental regulations, the state has the authorization for them, but in some cases, we do still have Federal agencies that will have the oversight and issue the permits, for example, our wetland permits under the 404 Clean Water. And so, we have not had that happen as far as the way you described it, but we have had the challenge of getting our Federal permits through after we already do have our state permits.

Mr. PALMER. You also have a situation where the Federal Government has shut down our Nation's largest reserves of cobalt. Is that true?

Ms. LUCAS. The Twin Metals project is the one you are referencing. I am not sure that that is the largest cobalt, but I will get back to you on that one.

Mr. PALMER. It is.

Ms. LUCAS. It is a significant resource.

Mr. PALMER. I believe it is the largest U.S. reserves of cobalt, which is absolutely critical to the Democrat agenda for completely restructuring our power grid and going to all renewables, which will be an economic and national security disaster because it makes us 100 percent reliant on China.

I want to address a couple of other things, and it is in the context of sue-and-settle. I ran a think tank for almost 24 years, and one of the issues that we addressed was how state legislatures could protect themselves from consent decrees from sue-and-settle. Otherwise, I think a lot on the left call it institutional reform litigation. And the thing is, is that if any of you are elected to a state office—Attorney General, Governor, Mayor, local office like Mayor, County Commission—and you wanted to know how much you were spending on consent decrees, unless you know the case number, there is no Federal data base that would provide you that information.

One of the things that, and I will say this in a bipartisan way, that this Congress has passed is the Settlement Agreement Information Data base so that we have a clear picture of all of these settlement agreements and what they are costing us. Do you think that would be of any help to any of you, and any of you can respond to this, in regard to addressing this issue of institutional litigation, otherwise known as consent decrees?

Mr. MILITO. Thank you, Congressman. I would say that oftentimes it is too late if you are just looking at the research and the data to see, you know, what the trend is for sue-and-settled type agreements or settlements. I think our concern is that you have subject matter that is under litigation, and the settlement ultimately expands way beyond that, unknowingly, to the public and a regulated community that has to end up abiding by it. It is good to have the information data to follow those trends, and there is probably some good think tanks out there to do that work so that they can then engage with—

Mr. PALMER. Well, there really is not, because unless you know the case number, there is no way to know how many of these consent decrees are out there. And consent decree is not only an expense, it is also a form of legislating through a special master or through a control group, which, again, I think, in my opinion, is a threat to representative government because nobody elected these people to do this. They circumvent the legislative process. So, I think it is extremely important that we have some ability to know what we are dealing with in terms of the settlement agreements, and I think clarity on the part of the Federal Government would be a huge help. Thank you, Mr. Chairman. I yield back.

Chairman COMER. The gentleman yields back. The Chair now recognizes Ms. Norton from D.C.

Ms. NORTON. Thank you, Mr. Chairman. I am glad that my Republican friends have called this hearing to discuss the money and resources in the judicial system, but as usual, they come down on the side of corporations and billionaires, not people.

My question is for Professor Clark. What my colleagues seem to take issue with is access to the courts that is sometimes made possible by third-party litigation funding. Republicans have a problem with ordinary Americans being able to afford lawsuits after they are injured or their loved ones killed by major corporations. Professor Steinitz said it best, and I am quoting, "Litigation funding will reduce systemic inequalities in our legal system by altering the bargaining position of individual class and sovereign plaintiffs and corporate defendants."

Third-party litigation funding levels the playing field. It is as simple as that. It gives plaintiffs, in other words, the people who have been harmed, the opportunity to have their case heard and obtain justice. Fundamentally, a lack of money should not prevent any individual American from seeking justice when they have been harmed. Likewise, on the complete opposite side of the spectrum, money should not be the determining factor in receiving the attention of and fairness from the Supreme Court. The notion that you need to be wealthy in order to access justice is completely at odds with the idea that justice is blind, which is central to the American legal system.

Sadly, the reality is that some of the wealthiest people in our country have apparently brought an audience with some of our Supreme Court justices. Justices Thomas and Alito have accepted extravagant gifts and have benefited from favors and donations worth millions of dollars. They have attended lavish vacations thrown on private jets and received expensive gifts from billionaires, all while failing to disclose any of it to the American people. This in part is enabled by the Supreme Court refusal to abide by a binding code of ethics. Professor Clark, how does the lack of a judicial code of ethics invite money and influence into the Supreme Court?

Ms. CLARK. Thank you, Member Norton. As you indicated and as I testified, the Supreme Court is not bound by the same code of conduct that applies to other Federal judges. And the lack of accountability mechanisms for, you know, violating or effective accountability mechanisms for, say, violating recusal rules or disclosure obligations, I believe has invited, has made almost inevitable the kind of activities that we have seen in recent news reports. And that is why, as I testified, I think it is important to focus not just on the individual Justices and what they have done wrong, but the need for an institutional response because, frankly, the problem is larger than just one or two Justices. It is the lack of effective ethics standards and enforcement mechanisms for the Court.

Ms. NORTON. The revelations that members of the highest court in the land may be compromised by immense wealth is fundamentally at odds with the principle that justice is blind. Without any immediate course correction by the U.S. Supreme Court, including by abiding by a binding code of ethics, the impartiality and neutrality of our justice system is at risk. Money should not be a barrier to accessing the judicial system, and wealth should not be

what buys you an audience with the Judges sitting on the Nation's highest court. I yield back.

Chairman COMER. The Chair now recognizes the gentleman from Arizona, Mr. Biggs, for 5 minutes.

Mr. BIGGS. Thanks, Mr. Chairman. It is always fun to hear an attempt to create new narrative from some of our colleagues in the left. I just got a kick out of your attack on the U.S. Supreme Court, but, you know, the goddess of the left, Ruth Bader Ginsburg, 2018, multiple trips, in fact, even with one of the individuals that the Ranking Member named as a tourist guest trying to derail this hearing because this problem is real. It is real. The problem is this. Let us talk to you, Mr. Milito, first. I would like you to give us, if you will, a timeline from when an offshore energy project, whether it is fossil fuel or renewable, is proposed to when energy is actually produced. How long does it take?

Mr. MILITO. It can range anywhere from 5 to 10 years, depending upon the location and the complexity of the project. Right now, the wind projects have taken about 7 to 10 years, but deepwater oil and gas projects about 7 to 10.

Mr. BIGGS. Yes, and in fact the U.K. just had an offshore wind farm sale for licenses that went with no bidders. Let us talk about the litigation, though. What does litigation do to the timeline?

Mr. MILITO. It extends it dramatically and sometimes makes it impossible to move forward and construct the projects and sanction the projects.

Mr. BIGGS. Are you familiar with sue-and-settle practices?

Mr. MILITO. Yes, we are.

Mr. BIGGS. How do those work?

Mr. MILITO. Well, an activist group files a lawsuit under one of the existing statutes, normally NEPA or Endangered Species Act along with Administrative Procedure Act, and then after the case is filed, negotiations begin, and government, through Department of Justice, settles the case and creates new requirements or restrictions based upon that settlement.

Mr. BIGGS. And so, you are stuck absolutely having to adapt or change the previously understood regulatory path because of the sue-and-settle litigation?

Mr. MILITO. Yes. And the case we are talking about today with the Rice's whale, there is actually a process under Endangered Species Act to determine what the critical habitat is, and they circumvented that completely, decided what that was to resettlement, which is going to take off the table millions of acres of potential oil and gas production for quite a while.

Mr. BIGGS. Ms. Steinitz, the groups engaged in sue-and-settle arrangements with government ever received taxpayer funding through monetary payouts?

Ms. STEINITZ. I do not know, sir.

Mr. BIGGS. OK. Do you know, Mr. Milito?

Mr. MILITO. I do not know. We have not tracked the funding.

Mr. BIGGS. Ms. Lucas?

Ms. LUCAS. No, sir. I am not aware of.

Mr. BIGGS. Ms. Wein?

Ms. WEIN. It is not something I am aware of.

Mr. BIGGS. OK. So, when we read that in 1 year the Sierra Club proudly proclaims that it has brought 200 lawsuits against—to stop, including renewable fuel projects, what does that mean for the folks who really want to get into renewable energy? What is that, Mr. Milito? What do they do?

Mr. MILITO. Well, at its core, these are job-destroying actions. We support more than 350,000 jobs along the Gulf Coast and throughout the country: 94,000 in Louisiana; 20,000 in Mississippi; 28,000, Alabama; 147,000 in Texas. These are high-paying jobs, and when you are taking action to restrict the production of oil and gas in the U.S., it is a regressive action because it is pushing the price of a commodity up, and it hurts disproportionately those who can least afford that. It is an inflationary action that really hurts everyone and American consumers.

Mr. BIGGS. What is the remedy, Ms. Steinitz?

Ms. STEINITZ. The remedy is not necessarily to preclude plaintiffs from being able to access funding, but it is to allow judges to regulate and defendants to have, under certain circumstances, visibility into how litigation funding may affect the course of a given litigation.

Mr. BIGGS. Are any of you familiar with the company, Tribeca? It is a mass tort litigation funding company. Just go to their website. It is very interesting. They list the number of cases that they have funded for mass tort litigation. Ms. Wein, are you familiar with Tribeca or other third-party litigation funders?

Ms. WEIN. Congressman, yes, I am.

Mr. BIGGS. Please tell us what the impact is.

Ms. WEIN. The impact of litigation funding on mass tort litigation is essentially turning mass tort litigation into an investment vehicle. It has taken the civil justice system and turned it into a market that third-party litigation funders can use to see a huge return on investment. In fact, third-party litigation funders in the GAO report said that they saw a return on investment of 91 to 93 percent. So, what it has done is enable third-party litigation funders to turn the civil justice system into an investment vehicle where they are able to manipulate the market conditions.

Mr. BIGGS. Thank you. I yield back.

Chairman COMER. The gentleman yields back. The Chair now recognizes Mr. Connolly from Virginia for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman. Here is another hearing where my Republican friends say look over here, but do not look over there. Professor Clark, you are a professor at Washington University in St. Louis. Is that correct? So, you got a lot of book learning about this stuff. I am going to try to take advantage of that. The Constitution of the United States created a Supreme Court. Is that correct?

Ms. CLARK. That is correct.

Mr. CONNOLLY. But who established the Supreme Court? The Congress of the United States by statute.

Ms. CLARK. Right.

Mr. CONNOLLY. And in that statute, we determined, in the first Congress, written by pretty much James Madison, how many Members there would be, and that could fluctuate.

Ms. CLARK. Correct.

Mr. CONNOLLY. What their jurisdiction would be, and that could fluctuate.

Ms. CLARK. Correct.

Mr. CONNOLLY. And we made them circuit court riders at that time, which they hated, but we made them do it. That one suggests, under the Constitution, we had wide latitude to set parameters for the Supreme Court. Would you agree with that?

Ms. CLARK. I agree with that.

Mr. CONNOLLY. Including ethics.

Ms. CLARK. Absolutely.

Mr. CONNOLLY. So, Mr. Alito, in making an extraordinary statement that Congress has no jurisdiction with respect to the Supreme Court and ethics, would seem to fly in the face of the Constitution itself, and precedent going back to the very first Congress, fair?

Ms. CLARK. I agree.

Mr. CONNOLLY. By the way, Mr. Alito—just a digression—he cited the fact among other things in *Dobbs*, that there was no right to an abortion contained in the Constitution, therefore, there is no right to an abortion in the United States, correct?

Ms. CLARK. That is my understanding.

Mr. CONNOLLY. Inter alia, but that was a key argument. By the way, I am not a constitutional scholar, but is there any provision in the Constitution expressly granting a Supreme Court the right to review and rule on the constitutionality of legislation passed by Congress?

Ms. CLARK. No.

Mr. CONNOLLY. No.

Ms. CLARK. That came into existence with—

Mr. CONNOLLY. No, that came in 1804 when Chief Justice Marshall made it up. And the first time it was ever used, by the way, an invidious moment of our history, was *Dred Scott* in 1857.

Ms. CLARK. Are you sure you are not a constitutional scholar, sir?

Mr. CONNOLLY. I play one sometimes. So, the highest court of the land is?

Ms. CLARK. U.S. Supreme Court.

Mr. CONNOLLY. OK. And, we need to be concerned, do we not, given the fact that there are lifetime appointments, about any outside or undue influence, real or even perceived, for the sake of the perception of real justice in America among the people that Supreme Court serves. Would that be a fair statement?

Ms. CLARK. Yes, sir.

Mr. CONNOLLY. Do you know who Ginni Thomas is?

Ms. CLARK. I do.

Mr. CONNOLLY. Who is she?

Ms. CLARK. I believe that Ginni Thomas is the spouse of Justice Clarence Thomas.

Mr. CONNOLLY. So, according to news reports, the longtime Vice President of the Federalist Society, Leonard Leo, used the firm belonging to Kellyanne Conway, former adviser to President Trump, to conceal tens of thousands of dollars of secret payments to that same Ginni Thomas from his nonprofit called the Judicial Education Project. Furthermore, Leo was found to have explicitly re-

quested that the paperwork “have no mention of Ginni Thomas, of course.” Now, Leonard Leo is not just anybody. Every single Trump judicial nomination and subsequent appointment was, in fact, vetted by and recommended by that same Federalist Society, of which Mr. Leo was the longtime vice president and still is. Should we be concerned about that—

Ms. CLARK. Yes, I think that we—

Mr. CONNOLLY [continuing]. From an ethics point of view?

Ms. CLARK. Absolutely. I think we do need to be concerned about this ecosystem that Leonard Leo has created, including the connections to billionaires, but also these payments to Ginni Thomas.

Mr. CONNOLLY. Why? I mean, that is just the spouse of a member of the Supreme Court. Why should we be concerned about that?

Ms. CLARK. Well, one of the sort of motivating factors of the disclosure obligations and the recusal obligations, as you alluded to, is to ensure not just the reality of impartiality on the part of justices and judges, but the perception of impartiality. We cannot look inside a judge or a justice’s mind, but we can look at the circumstances.

Mr. CONNOLLY. And presumably, there is some reason why Mr. Leo would want to conceal payments. I mean, if it is all above board, why don’t I just pay her?

Ms. CLARK. You would have to ask Leonard Leo about that.

Mr. CONNOLLY. But an inference could be drawn.

Ms. CLARK. It is curious that he wanted to ensure that that be secret.

Mr. CONNOLLY. Yes. You know, we have a lot of investigations floating around here in the first week back after the August break. I think one of those investigations ought to be about Clarence Thomas and the serious ethical breaches he and his spouse have engaged in. I yield back.

Chairman COMER. The Chair now recognizes Mr. Grothman from Wisconsin for 5 minutes.

Mr. GROTHMAN. Sure. First question, I guess I will go with Mr. Milito, but I guess anyone else can jump in. Obviously, we have heard a lot of stories today about third-party groups funding lawsuits and lawsuits that probably if you went through all the litigation, you may win. Have any of you had any experience as an attorney in which the plaintiffs in a lawsuit wound up, in your opinion, paying a price for filing a suit that probably was not meritorious? Is there a cost, in other words, for filing a marginal lawsuit that, as a practical matter, is imposed?

Mr. MILITO. There can be, but I have not, in my experience—I am not able to provide any examples of that with the cases that we have been involved with.

Mr. GROTHMAN. That is kind of what I am talking about here. There is none that you are aware of. Can you think of, in your mind, cases in which there should have been a price paid for filing them, but as a practical matter under our system, it is not? You do not have to give me the name of the case. You just—

Mr. MILITO. Well, I think what we are faced with is a legislative system whereby under each of these statutes, there is a right to bring suit, and I am not here to say that we should not be able to sue Federal agencies to hold them accountable. We should. We

should be able to do that. What our problem is that through the settlements, the parties, plaintiffs and Department of Justice, agreed to settlements that go well beyond the subject matter and create requirements and restrictions that really serve to shut down economic activity in the country. And I think what in the end we need is congressional work to make sure we are kind of putting boundaries around that so that we are not discouraging investment in the U.S. and pushing that investment to other parts of the world where they do things in a much worse way.

Mr. GROTHMAN. That is what I was going to talk about here. We have heard a little bit about how the system works in America. We all know that we would be better off if things were produced in America or grown in America, mined in America. Is there any other country around the world that has anything like this as far as kind of the ability to file lawsuits and have the government kind of in cahoots with the plaintiffs, perhaps changing the rules and putting us at disadvantages compared to other countries?

Mr. MILITO. I am not aware. I am not sure if our academic experts—

Mr. GROTHMAN. Any of the others have examples? Can you think of any? Can you think of no examples? In other countries, they would be just stunned by what our businesses have to put up with.

Mr. MILITO. Well, it is a good point, though, because we do have a strong legal and regulatory system that provides oversight and enforcement of our industries, of our activities to make sure we have clean water, clean air, and that we are straining and constraining emissions, and we are taking those types of actions. Other countries do not have what we have, and so when we ship investments to those countries, it is going to activities that are much less regulated and generally have higher environmental impacts—

Mr. GROTHMAN. You deal with oceans. As a practical matter then, is one of the products of this type of lawsuit that we are shifting, mining or whatever, to countries with a lot lower standards than ours?

Ms. LUCAS. Yes, sir. I think this is why we see the U.S. going overseas to get minerals that we have in Minnesota. I think that is one of the critical reasons, and it is one of the reasons I am proud to be here today to let folks know we do not have to go and make deals with countries that we should not be making deals with.

Mr. GROTHMAN. Yes. And can you tell me, as far as the environmental steps you have to go through in Minnesota compared to the environmental steps you have to go through in other countries of the world, could you give a comment as to the difference?

Ms. LUCAS. I am incredibly proud of the standards we have in Minnesota and the standards that we have in the U.S. We have rigorous standards. We care deeply about water in Minnesota. It is our brand, it is our thing, and we make it tough for mining companies, and we hold them accountable. And our regulators work really hard to find a way where we can manage to protect those resources and bring mineral resources into being for everything.

Mr. GROTHMAN. And a lot of times, if those minerals are not mined in Minnesota, are they mined in countries in which the pro-



tections are not there, and, therefore, worldwide we are hurting the environment by pushing economic activity outside the United States?

Ms. LUCAS. That is correct, sir.

Mr. GROTHMAN. Any other comments?

[No response.]

Mr. GROTHMAN. Thank you.

Chairman COMER. The time has expired. The Chair now recognizes Mr. Krishnamoorthi from Illinois for 5 minutes.

Mr. KRISHNAMOORTHI. Thank you, Mr. Chair. On December 10, 2019, this Committee held a hearing to examine and investigate widespread complaints from patients, physicians, scientists, and others that talc found in many consumer products, including in Johnson & Johnson talc-based baby powder, contained carcinogens such as asbestos and other materials. This followed a Reuters 2018 investigation, saying that internal documents examined by Reuters show that the company, namely Johnson & Johnson's baby powder, was "sometimes tainted with carcinogenic asbestos, and that J&J kept that information from regulators and the public." As part of this Committee's investigation, the Committee uncovered that there were indeed carcinogens and talc, that there was merit to Reuters allegations, and that FDA testing was inadequate to determine its presence. Johnson & Johnson was invited to testify at this hearing, but declined to do so.

According to a May 2020 *Reuters* article, more than 19,000 lawsuits had been filed by that point in time, and according to recent statements by J&J, the company "continues to believe that these claims are specious and lacks scientific merit." And that is your , Ms. Wein, right?

Ms. WEIN. Congressman, thank you for the question.

Mr. KRISHNAMOORTHI. I cannot hear you.

Ms. WEIN. Apologies. Congressman, thank you for the question.

Mr. KRISHNAMOORTHI. That these claims lack scientific merit and are specious, correct?

Ms. WEIN. That is correct. Talc does not cause cancer.

Mr. KRISHNAMOORTHI. Correct. Well, that is your position. Interestingly, in May 2020, J&J announced that it would stop selling talc-based baby powder in U.S. and Canada, correct? And it does not' sell talc-based baby powder in U.S. or Canada, correct?

Ms. WEIN. Congressman, talc—

Mr. KRISHNAMOORTHI. It is just a simple question, ma'am.

Ms. WEIN. Talc was discontinued due to lack of consumer demand. That was a result of the widespread advertising funded by third-party litigation funders to spread the narrative that talc contains asbestos—

Mr. KRISHNAMOORTHI. And all these lawsuits, the 19,000 lawsuits, are specious and lacks scientific merit, correct?

Ms. WEIN. Congressman, talc does not contain asbestos and does not cause—

Mr. KRISHNAMOORTHI. And that is your position. I understand, and that is why you stopped selling baby powder. Now, let us see. In a recent interesting release, can you please put up the announcement that was publicized in the *New York Times*?

[Chart]

Mr. KRISHNAMOORTHY. "Johnson & Johnson Reaches Deal For \$8.9 Billion Talc Settlement in April of This Year," and you have not' disputed this piece of news, correct?

Ms. WEIN. Congressman, that was a proposed settlement proposal.

Mr. KRISHNAMOORTHY. So, you are withdrawing from the settlement?

Ms. WEIN. Congressman, the settlement was never agreed to by any of the parties. It was proposed in the context of a bankruptcy filing.

Mr. KRISHNAMOORTHY. So, is this proposed settlement something that you are walking away from?

Ms. WEIN. Congressman, pursuant to the bankruptcy judge's urging, we continue to engage in settlement discussions. However—

Mr. KRISHNAMOORTHY. Did you walk away from this settlement offer or not?

Ms. WEIN. Congressman—

Mr. KRISHNAMOORTHY. Eight-point-nine billion dollars has been put on the table.

Ms. WEIN. Congressman—

Mr. KRISHNAMOORTHY. Do you dispute the accuracy of this headline? "Yes" or "no." It is very simple.

Ms. WEIN. Congressman, we put a proposal forth in the context of a litigation matter for the settlement, which over—

Mr. KRISHNAMOORTHY. Sixty thousand claimants have now agreed to that. Now, have you put forward the proposal or not?

Ms. WEIN. Congressman, the proposal was put forth in the context of the bankruptcy.

Mr. KRISHNAMOORTHY. And you have not withdrawn from it, and 60,000 claimants have agreed to this so far, according to your press release dated April 4, 2023, correct?

Ms. WEIN. Congressman—

Mr. KRISHNAMOORTHY. This is your statement.

Ms. WEIN. Yes, Congressman—

Mr. KRISHNAMOORTHY. Yes. So, the answer is a proposal for \$8.9 billion settling over 60,000 claimants' allegations has been put forward. Now it is your position, of course, that the claims of the 19,000 lawsuits and more are specious and lack scientific merit, but your claims that somehow your product, Johnson & Johnson's baby powder, is somehow life-enhancing and that these claims are specious and lack merit are themselves specious. And you should think very carefully about casting all of these lawsuits as being somehow wholly lacking merit in themselves. Thank you so much. I yield back.

Chairman COMER. The Chair recognizes Ms. Foxx, or Dr. Foxx, from North Carolina for 5 minutes.

Ms. FOXX. Thank you, Mr. Chairman, and I want to thank our witnesses for being here today.

Mr. Milito, in Congress, we constantly have to guard our legislative powers to make sure the courts and executive branches do not usurp those powers through excessive regulations and rulemakings and activist litigation. One popular approach for third-party groups to achieve goals they cannot otherwise enact democratically through the legislative process is to use sue-and-settle tactics. The

Trump Administration sought to end sue-and-settle practices, but the Biden Administration permitted its use once more. Mr. Milito, can you describe the effects that sue-and-settle arrangements have had on America's ability to provide domestic energy sources and create jobs?

Mr. MILITO. Yes. The end result is an inability to move forward with investment in U.S. energy projects, and the outcome of that is a shift in investment and production to other parts of the world. We were on track in the U.S. Gulf of Mexico to, you know, get up to 2.2, 2.4 million barrels of oil a day, and that would have a tremendous impact on global markets in terms of putting downward pressure on prices to help consumers, on track to increase from 370,000 jobs to perhaps 420,000 or 430,000.

And at the same time, you know, the recent research out of Mackenzie, Wood Mackenzie, Rystad, and most recently ICF International, shows that when you produce oil out of the Gulf of Mexico, you are getting significantly lower carbon emissions from that production. If you do it in other parts of the world, it is much higher. So overall, the benefits of doing this in the U.S. Gulf of Mexico are better than anywhere else in the world.

I mean, the money that comes in, we generate billions of dollars for the Land and Water Conservation Fund, for urban parks and recreation, for national parks, that comes in because of offshore oil and gas development. But when you have the lawsuits and the twisting of the statutes, the Outer Continental Shelf Lands Act, the leasing pauses, you are diminishing all those benefits, and you are preventing us from moving forward with this valuable activity. And I would say that it is counterproductive to the end game that a lot of the activist groups are trying to achieve when we are all trying to move forward together to reduce emissions.

Ms. FOXX. Right. I hear you saying there is no stakeholder input and comments taken into account in those sue-and-settlement agreements. Is that correct?

Mr. MILITO. For the most part, that is correct. You really cannot get into how the negotiations go, but I can just say that being an intervener in a lawsuit when a plaintiff files a case to kind of shut down energy production against the Federal Government, industry often intervenes. That does not necessarily give those industry parties who represent the workers of this country the opportunity to prevent the settlement from moving forward. The public and Congress generally know it all.

Ms. FOXX. Thank you. Ms. Lucas, in your testimony you state that too often we watch in frustration as our Nation looks overseas for minerals we could provide. With this week's news that a deposit of lithium was found along the Nevada-Oregon border that could be among the largest deposits of its kind in the world, what advice do you have for the communities near these newly discovered deposits? And how can we make sure the U.S. is able to reap the benefits of those metals, rather than allowing overseas competitors to supply our economic needs?

Ms. LUCAS. Thank you for that question. When the U.S. has the minerals, we have the opportunity to do things differently than we did in the past. We have the opportunity to engage in stakeholders, to bring environmental voices to the room where decisions are

made on how we permit. We have the chance to have really complicated discussions about where minerals come out of the ground and how they come out of the ground. I am excited about that opportunity out West. I ask that people who care about the environment get involved in these discussions on how we do it differently, not should we, how do we, because the universe did not put these minerals everywhere. They are limited spaces. We have to be very thoughtful on how we utilize those minerals. Thank you.

Ms. FOXX. I happen to think that the Lord has provided us in this country just the kinds of things we need. We have to be able to use them.

You also stated in your testimony that trust must be restored in our regulatory process, and I completely agree. In fact, I have introduced in this Committee, passed H.R. 3230, the Unfunded Mandates Accountability and Transparency Act, or UMATA, as we call it, that aims to restore trust in our regulatory process. What suggestions do you have for Congress to continue working to restore trust in the regulatory process?

Ms. LUCAS. I think I touched on them already, and I would love to put that in writing for you after this hearing.

Ms. FOXX. Thank you very much. I appreciate it.

Ms. FOXX. Thank you, Mr. Chairman. I yield back.

Chairman COMER. The gentlelady yields back. The Chair recognizes Mr. Khanna from California for 5 minutes.

Mr. KHANNA. Thank you, Mr. Chairman. Ms. Wein, what drug does Imbruvica, what does it treat?

Ms. WEIN. Congressman, I recognize Imbruvica is one of the products that we do market. I am not exactly sure what it treats.

Mr. KHANNA. It is OK. I am not trying to trick you. It treats leukemia. Do you know what the price that Johnson & Johnson has set for it?

Ms. WEIN. I do not have that on my fingertips.

Mr. KHANNA. It is \$484 per capsule per tablet, which works out to about \$14,000 per month, which works out to about \$160,000 per year for leukemia patients. Now, do you know, or I can tell you, how much money gross revenue that Johnson & Johnson has made from this drug over the last 10 years?

Ms. WEIN. Congressman, it is not something that I am an expert at, not something I am here to testify to today.

Mr. KHANNA. Twenty-two billion dollars. Do you know the gross profits of Johnson & Johnson in 2023?

Ms. WEIN. I could not tell you that.

Mr. KHANNA. Sixty-five billion dollars. So just to recap, you have got a pill for leukemia patients. You sell it at \$484 per capsule. That is \$160,000 a year. You make \$22 billion over that over the last 10 years, and you are making \$65 billion in profit. Now, we have passed as a Congress, and the President has signed a bill saying, you know what? Let Medicare negotiate to try to bring that price down, and you and your department, because you are Assistant General Counsel, have filed a lawsuit saying that that negotiation would be an unjust taking. Let me ask you this. Do you believe when the Veterans Administration negotiates for drug prices with you that that is a violation of the Takings Clause?

Ms. WEIN. Congressman, I appreciate the question. The bases for our litigation against HHS with respect to the Inflation Reduction Act are fully disclosed in our complaint. I am not an expert in this area.

Mr. KHANNA. You are here. You are the Assistant General Counsel for a company that is accusing the U.S. Government of taking your property because we are negotiating, and you cannot answer a simple question. Just a “yes” or “no.” Does the Veterans Affairs negotiation with Johnson & Johnson constitute a taking?

Ms. WEIN. Congressman, we believe that the IRA constraint—

Mr. KHANNA. I am not asking about that the IRA. I am asking you about do you believe the Veterans Affairs, when they negotiate, does that constitute a taking?

Ms. WEIN. Congressman, again, that is not a litigation that I have great familiarity with.

Mr. KHANNA. OK. So, I will just say you do not want to answer that question. Do you believe when Medicaid negotiates and gets a rebate for anything over the price of inflation, do you believe that that constitutes a taking?

Ms. WEIN. Congressman, again, it is not an area that I specialize in.

Mr. KHANNA. I guess I do not understand how being the Assistant General Counsel, you can come before the U.S. Congress when you are suing the U.S. Government saying that we are taking your property, and that is a very serious charge. “Taking” means, like, if I came, with the government, with a force, took your property, and you do not know whether it is a taking when the Veterans Administration negotiates, you do not know whether it is a taking whether Medicaid negotiates. I assumed you would say it is not a taking because obviously it is not a taking. These administrations have been negotiating for years, and yet you are arguing that Medicare, when they negotiate, it is a taking. Medicaid. Do you know how many percent of the American population is on Medicare?

Ms. WEIN. Congressman, no.

Mr. KHANNA. It is 18 percent about. Do you know how many are on Medicaid?

Ms. WEIN. Congressman, no.

Mr. KHANNA. About 18 percent, so, it is not like Medicare has a bigger market. Medicaid negotiates with 18 percent. Do you know about how many of our people are veterans? It is about 6 percent. So, you have already a larger population when you combine Medicaid and Veteran Affairs negotiating with your company so that you do not make \$65 billion in profits every year and so leukemia patients do not pay \$160,000.

You have filed a lawsuit. I think it is shameful what you and the pharmaceutical companies have done in suing the U.S. Government to protect those profits, and you are totally unprepared to answer a single question about what the Takings Clause is and a justification for that lawsuit. I mean, I really believe hopefully someone in the company and these other pharmaceutical companies can provide the American people with an explanation why you consider Medicare negotiating those drugs to lower those profits, those obscene profits, a taking, when you do not consider that for the Vet-

erans Affairs Administration or Medicaid. Mr. Chairman, I hope someone will answer my questions on that, and I yield back my time.

Chairman COMER. The Chair now recognizes Mr. Armstrong from North Dakota for 5 minutes.

Mr. ARMSTRONG. Thank you, Mr. Chairman. I find the subject of this hearing fascinating. As an old street lawyer, I do not always ask for influence and advice from law school professors, but this is a pretty interesting conversation. And I probably have a little different take than a lot of my friends on my side of the aisle in that, one, I think we should be very careful about distinguishing between marginal cases and bad faith cases. I think we should be very careful about dealing with excessive judgments versus unreasonable judgments.

And I think we talk a lot about capping judgments in tort reform and plaintiff's fees, but we never actually talk about the other side of the aisle and the cozy relationship between insurance companies and insurance defense firms. And I have been a part of cases that should have settled for policy limits on the second day they were litigated, and, quite frankly, my clients should have never had to hire a lawyer, but instead, we go through the litigation process solely for the purpose of billable hours and all the other asides.

So, I think we have to have a global conversation about what this looks like, but a fundamental bedrock of our judicial system is that a client has a right to engage with a lawyer in a manner of his or her choosing. Now, we do put some restrictions on that. We do not allow for contingency fees in family law cases in North Dakota.

I was in the middle of a fight about our state bar association trying to take away flat fee or transactional billing for criminal lawyers. As somebody who did that work, I adamantly opposed that in that the client hires you at the beginning of the case, you settle on an agreement, the case goes where it goes. They do not not go to trial because they cannot afford not to go to trial, and there are a lot of different ways in which you function in those things.

But the second part of that bedrock is that a client has autonomy over the course of their litigation. And I do not care if it is an environmental justice firm dealing in a sue-and-settle pipeline case or if it is an investment banking firm trying to weigh in on a settlement because the return does not exist in the same manner, or a mom who is paying the bill for 18-year-old kid who got a driving under the influence and is an aviation major student in Grand Forks, North Dakota. That client hires me, his mother pays the bill, that client and I have the relationship.

So, my question when we are doing all of this and in this theoretical place is, what is the role of Congress and what is the role of the attorney who is taking that case because functionally, to me, it eventually it comes down to that. Anybody who is licensed to practice law in any jurisdiction in this country has to take an ethics exam, and you can be a criminal defense lawyer—prosecutors have a little different version; we should talk about that some time, too—but civil plaintiff's lawyer, civil defense lawyer, and you are representing a client. Who is paying your bills are irrelevant, and if it is not irrelevant, you should not be representing your client. I mean, it is that simple. And when we get ourselves involved in

this in a congressional manner, I am worried we do more harm than good. And I am just interested in, and I am going to just go down the road because I did something very dangerous when you do congressional hearings: I disregarded all of my staff's questioning, and I sat here, and I thought about this. And I am interested in why aren't we just focusing on the fundamental nature of this problem, which is a lawyer who is licensed to practice law and takes a client, has a duty to represent that client. They do not have a duty to represent an NGO. They do not have a duty to represent an investment firm. They do not have the duty to represent the mother of that client. They have a duty to represent that client. And wouldn't we be better served by doing something and having a more robust version of what that looks like through the American Bar Association and every state bar association in this country than having congressional involvement in something that quite frankly we will do poorly. Ms. Steinitz?

Ms. STEINITZ. Thank you. Yes, I agree with you completely that a fundamental feature of our civil justice system is that the plaintiffs' control their case because the cases are about their legal rights. The issue is what happens when we are entering into a situation where there are third parties who obtained the right to control directly or indirectly that litigation, and that is done through an industry that is entirely unregulated, unlike lawyers who are regulated. Legal ethics do not apply.

Mr. ARMSTRONG. Well, except they still apply to the lawyer in that case. That is my point. I mean, I think you—

Ms. STEINITZ. Yes.

Mr. ARMSTRONG [continuing]. Can invest in whatever you want to invest in. But I mean, I have had a lot of uncomfortable conversations with people who have paid my bills versus people who I was representing, and mostly it was, I cannot talk to you, you are not my client. What my client and I talked about for an hour and a half is completely unavailable to you, and I do not care what my clients signed. Mr. Milito?

Mr. MILITO. No, I agree. We do need to continue to have the ability to bring cases in the Federal system over Federal agency action. Industry does it, environmental groups does it, citizens do it. So, our focus here is not on the attorney-client relationship and the ethics around that. It is about the expansion of the litigation and judicial activism that occurs, that takes it well beyond what is in the underlying statute to really stifle investment in U.S. project and really create these inflationary pressures and job destruction results that we all want to avoid. The idea here is to look at something like the debt ceiling bill where they took action focused on NEPA to make sure, OK, let us put some definition around it so we understand that there are bounds to these laws.

Mr. ARMSTRONG. If we want to do statutory definition to the standing and litigation reform, I am all in. I just worry about when we interfere with the attorney-client relationship in a way that we are trying to solve a problem, we are creating a whole another one. I am sorry. I yield back.

Chairman COMER. Thank you. The Chair now recognizes Ms. Brown from Ohio for 5 minutes.

Ms. BROWN. Thank you, Mr. Chairman. Once again, my colleagues on the other side of the aisle are carrying the weight for giant corporations and special interests, putting their needs over those of the American people. There are many pressing issues facing our Nation, from the epidemic of gun violence to protecting a woman's right to make her own healthcare decisions, and yet, this Committee, under Republican leadership, continues to spend its time working on behalf of the wealthiest, well-connected, and most powerful.

At the direction of these large corporations, my Republican colleagues are pushing to outlaw, undo, and overturn rules that benefit low-income Americans who are seeking justice. Right now, all across the country there are right-wing coalitions attempting to advance a conservative legal agenda, undermine judicial ethics and standards, and take this country back in time when people who look like me were not afforded the same rights and privileges of my Caucasian counterparts. That is what led most recently to the Supreme Court banning affirmative action in college admissions, and not to mention the Republican effort to implement a nationwide ban on mifepristone, the abortion medications.

Republicans want to cut funding for the judiciary and Federal defender services because they believe it is more important to game the system to their advantage rather than to ensure the system is fair for everyone. How far will they go? What is next? See, they have used the courts to rip up the constitutional protection for a woman's right to make her own healthcare decision. They have used the courts to throw out all kinds of commonsense gun violence prevention measures, doing the bidding of the gun lobby. They have used the courts to attack a fundamental tenets of our democracy, the Voting Rights Act, and the ability of the people to choose their representatives rather than the other way around.

So, Ms. Clark, you actually touched on something that I would like you to elaborate a little bit more on, which is how the court system is used and abused by large corporations and powerful special interests in ways the average person does not have access to.

Ms. CLARK. Congresswoman Brown, as I mentioned in my testimony, the revelations over the last 6 months from journalists indicate that some members of the Supreme Court have accepted repeatedly rather lavish gifts from very wealthy patrons. And this practice of, one might say fraternizing with this group, including, at least in a few cases, people who have matters before the Court or whose interests could be affected by Court decisions, this phenomenon absolutely undermines public trust in the Supreme Court. So, I would just say that is why I think it is important for there to be an institutional response rather than simply vilifying the Justices who have engaged in this behavior.

Ms. BROWN. Thank you so much. Well, I want to end by echoing Ranking Member Raskin and a call for a hearing on judicial ethics and conflicts of interests posed by Justices Clarence Thomas and Samuel Alito receiving gifts from GOP mega donors who have business before the highest court. I would think these significant issues of actual proven conflicts of interest would be of the utmost concern of my Republican colleagues given the time, attention, and resources this Committee has dedicated to futile, fabricated, and



reckless rumors about the President, which I will happily remind everyone, have been a dead end every single time. And with that, Mr. Chairman, I yield back.

Chairman COMER. You can yield back, but that statement was completely false. We are not going to strike it from the record because it is your opinion. You can have an opinion, but bank records do not lie. You should go to the Treasury Department and read, like we have, the 150 bank violations from this family, and I am excited about this Committee's newfound—

Ms. BROWN. Four indictments.

Chairman COMER. You can go. You want to go, Ms. Crockett?

Ms. BROWN. Ninety-one counts.

Chairman COMER. That what?

Ms. BROWN. Four indictments, 91 counts.

Chairman COMER. We are very excited about your newfound desire and concern about influence peddling. And to answer your request, we are going to have plenty of opportunities to talk about influence peddling, and you are more than welcome to bring up the Supreme Court. You are more than welcome to bring up the previous Administration—

Mr. RASKIN. Point of order, Mr. Chairman, but where exactly are we in the order of things? Whose time is being used right now?

Chairman COMER. Well, we are now yielding to me. It is my time to ask questions. Ms. Wein, I think it is important, the purpose of this hearing. Can you briefly summarize how third-party litigation funding works because I do not think everyone understands that.

Ms. WEIN. Congressman, based on my experience, what is happening is that law firms will contract with third-party litigation funders, get a significant amount of cash from them, use that money to generate huge media and advertising campaigns alleging that a product is defective. They then collect those cases, sell those cases, funnel those cases into a multi-district litigation and wait around for settlement.

What is very interesting about this, Congressman, is that there is no transparency, no disclosure and no, to Congressman Armstrong's point, no ethics obligations between the funder and the ultimate claimant, which is what is so troubling.

Chairman COMER. How long has this been going on, and I assume this is a very fast-growing industry because of the rate of return that you mentioned in your opening statement.

Ms. WEIN. Yes, Congressman. Globally, it is estimated that the litigation funding is about \$39 billion, within the U.S., about \$13 billion of assets under management.

Chairman COMER. I would say that the overwhelming majority of investors, if not a hundred percent, are institutional investors, in other words, high-net-worth investors.

Ms. WEIN. Hedge funds, private equity, and just pure litigation funders, again, with no transparency, no disclosure. Defendants do not know who is negotiating at the table. Defendants do not know who has control over the litigation, neither in many cases do the actual claimants because there is no disclosure requirement.

Chairman COMER. This is the purpose of the hearing. We are certainly learning about this industry. This is something that has an impact on consumers. It has an impact on the entire judicial sys-

tem. As we know, we are bogged down and behind in these cases. How much do frivolous lawsuits, would you say, cost the average consumer for prescription drugs? Do you have any idea?

Ms. WEIN. Congressman, that is a very hard number to give you. I do not have that at my fingertips, but what I can tell you is that over the last 10 years, with the introduction of third-party litigation funding into the pharmaceutical and medical device mass tort litigation sphere, we have seen an exponential increase in the number of claims. And also, as I mentioned in my opening statement, about 20 percent to 30 percent to 50 percent of those claims are entirely meritless and do not belong there.

Chairman COMER. And I would assume that a big company like yours, if you have to pay out a lawsuit or a frivolous claim, that you just pass that on to consumers because one of the biggest issues in America right now, and the polling shows that, is inflation. The cost of healthcare is certainly a big part of inflation, and we are going to have a hearing next week on the pharmacy benefit managers, an area where I think the majority of this Committee actually agrees on, which is great that we actually agree on an issue. So, I think this is something that we need to continue to study and evaluate and try to determine through probing what this costs and the impact on the overall judicial system.

Ms. Lucas, we are concerned also about energy policy in America, and there is a push by this Administration, and, quite frankly, there are a lot of consumers that want to have electric vehicles, for example. To be able to be successful in converting to electric vehicles, we are going to have to have rare earth minerals. And your state has an abundance of reserves, but it is my understanding that because of lawsuits, it has become very difficult to get permits and to mine. Can you briefly kind of give us a summary of what is going on in your state?

Ms. LUCAS. Yes. So, we are primarily copper, nickel, platinum, palladium, gold, cobalt.

Chairman COMER. Which are very important for batteries.

Ms. LUCAS. Which are very important for batteries. Our one project was permitted, or I will say our front-running project was permitted in 2018 and 2019, and they are still tied up in litigation.

Chairman COMER. So, where are we getting those rare earth minerals for the batteries that Ford and Toyota are in the process of building massive plants? One in my home state, we are very happy to have that investment, but where are they getting the rare earth minerals?

Ms. LUCAS. Not from my state.

Chairman COMER. They get them from China, from Africa.

Ms. LUCAS. China, Africa.

Chairman COMER. And that is a problem, and as we move forward and talk about energy policy and the push for electric vehicles, I am fine if the market wants that. I am a free market guy, but I am concerned about the capacity of our grid. I am concerned about our reliance on China because China has been purchasing many of these rare earth mineral mines in Africa, and it is a concern. So, this is something that we need to communicate further about to see what we can do to assist in helping utilize our own

resources, our own rare earth mineral mining and all of the capacity and potential we have in the United States.

My time has expired. The Chair now recognizes Ms. Stansbury from New Mexico for 5 minutes.

Ms. STANSBURY. Thank you, Mr. Chairman, and I am grateful that the Oversight is having a hearing today on judicial activism and dark money influences, especially when we are seeing one of the most corrupt dark money influence courts ever in American history. Of course, I am disappointed to see that the Chair and the GOP Majority, as usual, has been propping up these dark money actors and calling industry witnesses to testify at this hearing today.

It is, as the Ranking Member said, truly a moral and, I believe, constitutional crisis in our legal system as we are seeing a Supreme Court and Justices who are taking lavish vacations and kickbacks from wealthy donors, hearing cases that are funded directly and indirectly by right-wing donors and organizations, and in the process, systematically gutting the American judicial system and undermining our fundamental rights, rights like the right to control our own bodies, to be safe in our communities, and rights to live free and healthy lives in our communities. So, as they say, let us follow the money.

First, let us start with abortion and reproductive rights. As we know, last year, the Supreme Court handed down the Dobbs decision, which upended 50 years of settled law, protecting our right to control our own bodies, and who funded this litigation? Organizations like the Alliance Defending Freedom, bankrolled by organizations like Leonard Leo and Harlan Crow. Yes, that Harlan Crow, who we know has been wining and dining Supreme Court justices for years.

Second, let us talk about the right of our tribal nations to be sovereign and to protect their communities. Last year, the Supreme Court handed down the Castro-Huerta decision, gutting Federal recognition of tribal sovereignty in criminal jurisdiction and overturning over 100 years of settled law, and agreed to hear a case involving the Indian Child Welfare Act and the right of tribal communities to control who can adopt children from their own communities. Who funded these efforts against the Child Welfare Act? It was organizations like the Goldwater Institute, funded by the Koch brothers and the Mercer family, which, as you all know, has direct ties to organizations and folks like Betsy DeVos, who tried to gut our education system in the Trump Administration, and the Pacific Legal Foundation that is funded by companies like ExxonMobil. Can you imagine dark money organizations suing to take indigenous children out of their communities? I mean, it does not get much darker than that, does it? Really.

Finally, let us talk about our right to clean water, you know, that basic right to live. Months ago, the Supreme Court gutted the Clean Water Act when they handed down the Sackett decision. Guess what? This case was funded in part by groups like the Searle Foundation Trust and Donors Capital Fund, which poured money into that case from organizations and donors also tied to Leo Mercer, and the Koch families, and organizations which have been actively undermining climate action for years. And at the end

of the day, it resulted in a decision that the Court handed down that essentially said that our rivers and streams and wetlands should not be protected, including over 90 percent in the state of New Mexico, which I represent, going even further than Donald Trump went in gutting the Clean Water Act.

So, if the Majority wants to talk about dark money and activist courts, I am so here for it. And let us talk about the ways that it is actually undermining our fundamental rights, our Constitution, and our judicial system right now in this country because I have to say that I have never in my lifetime seen a more activist Court and a Court that is more influenced by dark money than what we are seeing in this country right now, and I believe that it is one of the most significant threats to our democracy.

So let us talk about it. That is what we should be talking about today, not a bunch of industry folks sitting in front of us talking about frivolous lawsuits. And that is why we need to be reforming the courts, enforcing judicial ethics and removing judges who violate their oath because literally, our democracy and our rights as a country depend on it. And I yield back.

Mr. HIGGINS. [Presiding] The gentlewoman yields. The gentleman from Florida, Mr. Donalds, is recognized for 5 minutes for question.

Mr. DONALDS. Thank you, Mr. Chairman. I think it is important to first note out for the record that the use of “dark money”, especially since 2020, has actually been dominated by my colleagues on the other side of the aisle. The *New York Times* has reported on this, The Hill has reported on this, that most dark money, whether you want to talk about the Court, or politics, or whatever the case might be, actually comes from the political left and the Democrat Party. It has not been written about in the pages of the *New York Post*. That comes actually from publications that typically lean left in the United States.

Real quick, Mr. Chairman, I want to actually kind of change speeds a little bit in some of what we have been discussing and do talk about some potentials that may exist, affecting our judicial system. This is really for all the witnesses. Are you aware of any specific examples or instances of the Chinese Government paying American law firms to sue for certain causes that would actually embolden the CCP’s policy here in the United States? Anybody?

Ms. WEIN. Congressman, thank you for the question. I am not. However, the reason for that primarily is because we do not have access to third-party litigation funding agreements. We do not know in many cases who is funding these litigations, and that is why transparency, disclosure, regulation around this industry is so very important.

Mr. DONALDS. OK. Thank you for that. Quick follow-up on that one. Do you guys believe that third-party litigation has the potential to discourage and hamper American innovation?

Mr. MILITO. Absolutely. I would look at the Gulf of Mexico as one of the most premier innovative energy hubs in the world. We are ready to deploy carbon capture and storage, ready to invest in hydrogen, offshore wind, oil and gas. We can do it all, but every one of those forms of energy, whether it is oil and gas, wind, carbon capture and storage, is subject to litigation, and that threatens the

ability of the U.S. to be the leader when it comes to deploying and advancing new technologies, and it sends that overseas. Our companies are doing it, they are ready to do it, and they want to keep doing it, but the court system holds it up.

Mr. DONALDS. All right. Let us build off that a little bit because one of the main topics when you are talking about some of the renewable energy sources, it also delves into critical minerals, and rare earth minerals are part of that. We know that China basically controls the green tech supply chain. No matter how we want to talk about it here in the United States, those are the facts. Do you believe that China is a vital linchpin in the solar and wind supply chain in the United States?

Ms. LUCAS. Yes. Thank you for that question. Right now, the vast majority of our renewable energy technologies come from China, and we have very limited manufacturing capability in the U.S. I am proud to say our state has one and soon to be a second solar panel manufacturer, but a lot of their materials are still coming from China. And I hope we can be honest about that and think about how we change that situation.

Mr. DONALDS. If we took China out of the supply chain equation, can the United States currently build an offshore wind farm? Mr. Miloto?

Mr. MILITO. We are moving in a direction of being able to do more and more of that in the U.S. We are building manufacturing plants. We are—

Mr. DONALDS. Well, hold on, real quick, real quick, because one of the things in Congress we hear a lot is, and it is not just here in hearings. We hear in meetings all the time, “we are positioning ourselves, “we are on our way to do that.” Today, if China was removed from the supply chain equation, could we today build an offshore wind farm?

Mr. MILITO. I do not know, to be honest.

Mr. DONALDS. I would actually probably say that if you do not know, then the answer is there is no way it is going to happen. In your personal opinion, do you think prices of the electricity generated from offshore wind would go up or down if the United States had the capability of domestically mining important minerals and the ability to manufacture critical components? So, if we basically did it all internally here in the United States, do you think the cost per kilowatt hour would go up or down?

Mr. MILITO. The movement of the sector continues to drive costs down because of efficiency and cost effectiveness over time, and the scale is driving toward greater and greater efficiency, so doing it in the U.S. should not slow that down.

Mr. DONALDS. OK. All right. Listen, I think that is all I need right now. I think one of the things we should be concerned about, and, Ms. Wein, I think you said it initially, is that one of the issues we are clearly seeing with third-party litigation is that there are “dark pools” that are funding all kind of lawsuits on all kind of sides of the aisle. And I do think that there are some levels of transparency that we need to find around this because we should not be using the civil litigation system to create policy that, frankly, belongs here in the halls of Congress and in state capitals across the country. With that, I yield back.

Mr. HIGGINS. The gentleman yields. The gentleman from Florida, Mr. Frost, is recognized for 5 minutes for question.

Mr. FROST. Thank you, Mr. Chairman. In my district in Central Florida, I have met with countless families, children, and seniors whose lives have been devastated by the opioid addiction and epidemic. In 2019, a driver in a community that is in my district called Bithlo, pulled into a stranger's driveway, abandoned the car, and in the car left two overdosed women in the back. When they found the car and they found the women, they were barely breathing.

I will say recently, thanks to the tireless work of folks like Project Opioid, Transformation Village, leaders like Tim McKinney and other local organizations in Central Florida, things are trending in a better direction, but it is still dire. And Republicans are showing us today exactly what they actually care about. Today, they have had the chance to hold big corporations accountable for the damage they have done to our communities, but instead of looking into that, have invited big corporations here to air their grievances about how everyday Americans are bullying them. This was supposed to be the Oversight Committee, and so far, the only oversight we have done is into the municipality of Washington D.C., into the President—nothing coming out of that—seeing Hunter Biden's dick pic. I mean, this is the stuff we have been doing here.

And recently, more than 100,000 people have died from opioid overdoses in 2022, and pharmaceutical companies that push prescription opioids were partly responsible. In the lawsuits that followed, Johnson & Johnson were forced to pay \$5 billion in a settlement. Following that very public settlement, for some reason, Johnson & Johnson decided it would be a good idea to send their assistant general counsel to Congress to complain about these and other lawsuits that Johnson and Johnson have been a part of.

Johnson & Johnson have a market cap of over \$400 billion. The 2021 lawsuits and the countless Americans who were impacted by the opioid epidemic only set Johnson & Johnson back a cool \$5 billion, yet today, my Republican colleagues turn a blind eye to the opioid crisis. They would rather use the gavel to amplify corporate demands that seek to deny Americans access to the resources needed to hold corporations and companies like Johnson & Johnson accountable. Of the \$26 billion that four major drug companies agreed to pay for their role in the opioid epidemic, about \$2 billion went toward lawyer fees. Now in this community in my district of Bithlo, the per capita income is roughly \$30,000 dollars a year.

Ms. Steinitz, I have some pretty straightforward questions for you. If someone in Bithlo in my district had a family member that was mismarketed opioids and suffered life-changing addiction or even worse, death, how would they normally seek redress from the pharmaceutical companies that were partly responsible for the mismarketing?

Ms. STEINITZ. Through lawsuits.

Mr. FROST. Through lawsuits. If they got into this lawsuit, could they represent themselves?

Ms. STEINITZ. They would need counsel.

Mr. FROST. But they have the right to also represent themselves, right?

Ms. STEINITZ. Yes, they have the right to represent themselves.

Mr. FROST. Against an army of pharmaceutical lawyers, how would that go if someone was representing themselves if they did not have the means necessary to accrue tens of thousands, hundreds of thousands of dollars in lawyers' fees?

Ms. STEINITZ. Pro se litigants who represent themselves are rarely successful.

Mr. FROST. Rarely successful. Many of these lawsuits are complicated and last for years, right? I mean, you know, how do you think one of my constituents in Bithlo making \$30 grand a year would be able to afford tens of thousands, hundred thousand dollars in lawyers fees? Do you think that might be possible for them or no?

Ms. STEINITZ. I do think that plaintiffs should be able to access financing, whether it is through the contingency fee or through third-party funding litigation. I do have a concern that sometimes these people are the ones who are preyed on the most.

Mr. FROST. And, Ms. Steinitz, last question. In civil cases, if someone who needs to file a lawsuit cannot afford an attorney, is there a constitutional right that one be provided to them?

Ms. STEINITZ. In civil cases? No.

Mr. FROST. In civil cases, no, there is not. By holding this hearing, Republicans on this Committee have shown that they care more about putting profits over people, that they care more about perpetrating a myth that people in communities around the country who have been exposed to toxic chemicals, sold contaminated baby powder, and flooded with opioids in their communities are demanding too much by demanding justice. These folks are not the villains. The American people are not the villains. They are people in our communities fighting back against wealthy corporations, and they are the real heroes.

And to Johnson & Johnson, I want to say loud and clear, you paid \$5 billion for your role in the opioid epidemic and acknowledge no wrongdoing. No. 1, there was wrongdoing. No. 2, it should have been a hell of a lot easier to take Johnson & Johnson to task, and I think they should have had to pay a lot more money. Shame on Republicans for holding this hearing to vilify the people who are helping poor and working-class Americans level the playing field and stand up for themselves. Thank you, Mr. Chairman. I yield back.

Mr. HIGGINS. The gentleman yields. The gentlewoman from Michigan, Mrs. McClain, is recognized for 5 minutes for questioning.

Mrs. MCCLAIN. Thank you, Mr. Chairman, and I first just want to share my excitement that my colleagues on the other side of the aisle are so concerned about ethics. I am extremely excited to hear about that since this Committee has uncovered that the Biden family has received over \$20 million from foreign nationals and they cannot say one thing they did to earn that money. So, I am looking forward to this ethics talk. But, I would prefer to talk about something that maybe we can agree upon and move, and get some clarity around.

I think we all can agree that the lack of transparency in third-party litigation funding is concerning, whether it is dark money on either side, right? That is never a positive. The lack of monetary reporting requirements in third-party litigation funding opens the door for foreign entities. This is my concern, for foreign entities to influence the U.S. court proceedings for their own political and perhaps monetary gain.

Foreign adversaries could access, I believe, privileged information, including sensitive government information, patents, or confidential business information via the litigation process because of the lack thereof of transparency. So, my question, Professor Steinitz, is, are there loopholes in the current legal system by which a foreign adversary, such as China, could gain access to highly confidential information via the discovery process?

Ms. STEINITZ. The discovery process does allow litigants to seek the information of their adversaries, and so that is a possibility.

Mrs. MCCLAIN. OK, so yes. So, we should all be concerned that there are loopholes that our foreign adversaries could gain access to critical information that may end up hurting us. Could this impact U.S. companies' intellectual property or even our national security with this information that they could obtain?

Ms. STEINITZ. It could happen in any individual case. I do not know that we have a systemic problem with that and there are no reported cases of that sort, but it is a scenario that could come to pass.

Mrs. MCCLAIN. OK. Do you believe that updating reporting requirements disclosing lawsuit funding sources could be a potential remedy for this situation?

Ms. STEINITZ. Yes, clarifying under what conditions third-party funding should be disclosed would be helpful.

Mrs. MCCLAIN. Let me ask my question in a different way. What would the harm be in updating the reporting requirements for disclosing lawsuit funding? What would the harm in that be?

Ms. STEINITZ. The harm could be if there is over-disclosure. So, for example, requiring plaintiffs to disclose how much finance is available for them to pursue their claim is oftentimes not relevant and can be misused in a given litigation context.

Mrs. MCCLAIN. Thank you. In 2022, 14 State Attorney Generals sent a letter to Merrick Garland that stated, "Foreign countries, such as China and Russia, could use third-party litigation funding to fuel targeted lawsuits designed to weaken U.S. national defense companies in the business of protecting our national security interest. Likewise, costly litigation aimed at sabotaging major energy sectors that are vital to our economy poses a direct threat to our economic security interest and global independence." Mr. Milito, can you explain how costly litigation is already impacting our economic security and weakening our energy independence?

Mr. MILITO. Yes. The U.S. has risen from being energy scarce back in 2009, producing, like, 5 million barrels a day to close to 13 million barrels a day, and that has shaken the world markets. Geopolitically, we are in a much more powerful position today than we have ever been in when it comes to energy, and we could see Ukraine, Russia, how Russia uses it. We know China wants to dominate energy, and Iran, Iraq, you name it. You know, they use



energy as a tool. So, when we see efforts through the court system to constrain U.S. energy production, we are providing, you know, a shift in those benefits and a shift in that geopolitical control to our enemies. And it hurts us from a national security standpoint because energy security is national security, and these are long-term needs that we have. And when we fail to replenish our oil and gas potential through leasing and other activities, we are really hurting us for near term, midterm, and long term.

Mrs. MCCLAIN. I believe the lack of transparency in third-party litigation is not only a threat to our legal system, but clearly a potential threat to our national security. And I am out of time, so I yield back. Thank you.

Mr. HIGGINS. The gentlewoman yields. The gentleman from California, Mr. Garcia, is recognized for 5 minutes for question.

Mr. GARCIA. Thank you very much, Mr. Chairman. I want to thank all of our witnesses for being here today, and it is apparent that we are here today because our Republican colleagues are worried that it is too easy for the American people to bring legitimate claims against big corporations that poison and pollute our communities. And as they put it in their press release when they announced this hearing today, they are concerned that “financiers are hijacking America’s courtrooms.”

Now, I think my colleagues, of course, might be projecting. Big corporations, as we all know, are doing just fine. Meanwhile, Republicans are willfully ignoring the fact that wealthy conservative donors are lavishing gifts on the conservative Justices of the Supreme Court. So, if they want to talk about money in the Court, let us talk about Justice Clarence Thomas and the many allegations of ethical lapses and conflicts of interest that came to light just a few months ago. So, we are going to keep this simple.

[Slide]

Mr. GARCIA. Now first, I have a photo here. We see Justice Thomas with his very generous friend, Harlan Crow, who we have heard a lot about. We know that Crow is a conservative billionaire who has poured enormous amounts of money into Republican causes, funded right-wing advocacy organizations, including those, of course, run by Justice Thomas’s wife, Ginni Thomas, who has had, of course, cases before the Court. Now, some of these gifts that have been given to Crow by Thomas—let us list those.

Justice Thomas regularly stays at Harlan Crow’s private Lakeside Resort in New York, which I hear is very lovely. In 2017, Justice Thomas stayed at the resort with fellow guests from Verizon, the American Enterprise Institute, and PricewaterhouseCoopers, to name a few. In 2019, Justice Thomas flew on Harlan Crow’s private jets and enjoyed 9 days of island hopping in Indonesia on Crow’s 160-foot yacht, which I have never seen a yacht that large. I am sure it is very lovely. It came with servants and private chefs. If Justice Thomas had actually chartered that yacht himself, it would cost him half a million dollars.

Now, Justice Thomas also accepted a \$19,000 Bible from Harlan Crow, of course that once belonged to Frederick Douglass, apparently it must be the same Bible that the Justice is using to take away rights from women and gay people. Now, Harlan Crow’s foundation also made an over \$100,000 donation to Yale Law School for

Justice Thomas' portrait fund. Now, Harlan Crow purchased Justice Thomas' family home and a property where Thomas' mother has lived rent free, and Thomas Crow also paid the boarding school tuition of Thomas' grandnephew, Harlan Crow, valued at over \$100,000. So, the list, of course, goes on and on and on, and if this is not corruption, I mean, I do not know what is.

Now, Professor Clark, I want to thank you for your testimony today. How was Justice Thomas able to accept these lavish gifts, and how is it possible that a sitting Supreme Court justice can take so much without scrutiny?

Ms. CLARK. Congressman Garcia, Supreme Court Justice Thomas has engaged in his practice of receiving these lavish gifts, as you outlined, and even more disturbing, in my view, is the fact that he failed to disclose those gifts or many of them. And he has gotten away with failing to disclose until these gifts and other inaccuracies were discovered by journalists or other non-government organizations. So, there is a lack of—

Mr. GARCIA. And we are to assume that that Justice Thomas is trying to keep these things hidden from the public. I mean, he did not disclose his gifts. Is that your assessment?

Ms. CLARK. Yes, it is true that he did not disclose these gifts.

Mr. GARCIA. And so, what he chose not to disclose was traveling on lavish large yachts, was being treated to the best food, was traveling in Indonesia, was getting a \$20,000 Bibles, was gifts to his favorite charities, and he chose to not disclose any of these information to the public. Is that correct?

Ms. CLARK. Congressman Garcia, I believe that the Bible may have been included on one of his financial—

Mr. GARCIA. Good for him. That is good for him.

Ms. CLARK. I think that everything else you mentioned, he did not disclose until a call to account.

Mr. GARCIA. Absolutely. And, of course, we know the issue, of course, is not just the gift themselves, but it is actually the disclosure process. Another issue is that some of these gifts have had connections to cases that have been in front of the Justice, himself, and so these are—and with other businesses was tied to Mr. Crow. Now, Republicans claimed to be concerned with outside money influencing the legal system but only when it hurts their corporate backers. When right-wing billionaires create conflicts of interest for the highest court in our country, they are completely silent. So, I look forward to the many hearings that we have on Clarence Thomas and the justices and their illegal gifts that they are receiving and not disclosing.

Now, this is what happens when we combine big money donors with weak judicial ethics rules. We must do more to bolster the integrity of the Supreme Court. I want to thank Ms. Clark for your work in these efforts. Like all of us on our side of the aisle, we want to put the American people before corporations and put the Constitution above conflicts of interest. Thank you, and I yield back.

Mr. HIGGINS. The gentleman yields. I recognize myself for 5 minutes for questioning.

Mr. Milito, I am going to be questioning you, but first Ms. Wein, may I suggest to you, ma'am, I would likely not be welcome on one

of your boards, but let me just say I think that this should be solid advice regarding veterans and our elders: just give them the drugs that they need. I am talking about maybe 75 million Americans. Most of them do not use a lot of medicine, and most of that medicine is not super expensive. Just going to go on record saying this is common opinion of a regular American. Across the country, Big Pharma has challenges with reputation, hearings like this, and unending lawsuits, billions of dollars. Billion is a thousand million. You know, Americans cannot get their heads wrapped around that. And meanwhile, you got veterans, you got our elders, struggling to get drugs. Just give them what they need. You will find it to be a win.

Mr. Milito, you are familiar with the Rice's whale situation?

Mr. MILITO. Yes, sir, I am.

Mr. HIGGINS. I am going to be questioning you on that. America suffers from a toxic legal climate for industry and insured businesses. This is well-known, and litigation has a particular specialty of the modern era is weaponization of the executive branch against American citizens when you have Federal departments and agencies like the EPA, DOL, NOAA, working with activist organizations and recruiting and, in many cases, training plaintiffs and those plaintiffs file lawsuits and they sit back and wait for their settlements. There is quite a ruckus going out to the transportation industry, our airports, our maritime ports, oil and gas industry, agriculture industry, community banks and credit unions, trucking, rail, it is a growing racket, and it is disturbing.

So, today's hearing is entitled, "Unsuitable Litigation: Oversight of Third-Party Litigation Funding," and we are going to dive into something called Rice's whales regulation through litigation, as you refer to it, Mr. Milito. So, by background, early this year, a coalition of environmental protection groups filed a petition with the National Oceanic and Atmospheric Administration, NOAA, to establish a year-round 10-knot—that is about 11-and-a-half miles per hour—vessel speed restriction zone and other vessel-related mitigation measures in the Rice's whale core habitat area, which is a large swath of the Gulf of Mexico. So, for Americans watching, you are talking about whales that were essentially determined to use that area as a habitat a few years ago by NOAA. This is the major corridor for commerce in the Gulf of Mexico. You are talking about keeping vessels at under 10 knots, and talking about them not operating at all at night. It would be like a deathblow to American industry. You think inflation is bad now. If these rules go into effect, it is going to be exponentially worse.

So, Mr. Milito, you stated that the agreement does two things: it removes millions of acres from the upcoming offshore lease and sale in Gulf of Mexico for oil and gas, and places new unwanted restriction on oil and gas activities in that region, and targets things like vessel speed. Explain to America, please, why this example of regulation through litigation is bad for every American.

Mr. MILITO. Right now, it is preventing our industry from being able to produce the energy that our country relies on for a high quality of life. It impacts jobs for everyone along the Gulf Coast and in states throughout the country that support that region, and it eliminates the ability for the government to get billions of dollars

in funding for Land and Water Conservation Fund, urban parks and recreation, for coastal restoration, national parks, it has a huge impact on that. That is just a short term.

In the long term, you are looking at an entire barrier put across the entire Gulf of Mexico, from the Texas and Mexico border all the way around to the Florida Keys where vessels are going to be impacted in a way that that whole region is going to have its commerce disrupted and that will ripple through the U.S. economy.

Mr. HIGGINS. Thank you, sir, for that clarification. Ms. Wein, did you like to respond to my suggestion for your board?

Ms. WEIN. Congressman, thank you for the suggestion. Johnson & Johnson leads accessible and affordable healthcare as evidenced by the fact their net prices have declined for the past 6 years. I urge you to look at our 2022 transparency report that is available on our website, but I thank you for the comment.

Mr. HIGGINS. Yes, ma'am, and thank you, and I urge you and your company to look at American veterans and elders through a special light. They are treasures for us. Let us take care of them. I yield. I yield, and I move to Ms. Lee from Pennsylvania is recognized for 5 minutes.

Ms. LEE. Thank you, Mr. Chairman. While I am thrilled with any and all opportunities to talk about judicial ethics, I also find it very telling that my Republican colleagues only want to discuss that when corporate CEOs are the so called victims, not when dark money funded and fueled the overturning of Roe, or the rollback of LGBTQI+ protections, or the reverse of student loan relief and the end of race-conscious college admissions, not when it was revealed that two of our most right-wing Supreme Court Justices, Alito and Thomas, had been bought and paid for by billionaires like Harlan Crow, who among other things I will get to shortly, footed the bill for Justice Thomas' flights and private jets and lavish vacations, and not when the same dark money mega donors pushed radical, often unqualified judges onto the Federal bench, further eroding the legitimacy of our court system.

We all know that wealthy right-wing donors have increasingly formed covert operations using money and relationships with powerful people in Washington to support strategic litigation for Republican cultural war causes, such as ending the acknowledgment of systemic racism in college admissions. One of these operations is Donors Trust, funded by a largely anonymous group of Republican mega donors, though it has been linked to major right-wing funders, such as the Koch brothers and Leonard Leo. Professor Clark, why do you think dark money organizations, such as Donors Trust, want to hide where their money is coming from, and do you think that is ethical?

Ms. CLARK. Congresswoman Lee, I believe that the record is rife with examples of wealthy trusts and institutions and foundations attempting to exercise influence and also attempting to hide their exercise of influence because the degree to which the public knows about it, there can be a backlash against it.

Ms. LEE. So, throwing a stone and hiding your hand.

Ms. CLARK. There is, I believe, a long record of that.

Ms. LEE. Thank you. According to their 2019 IRS filings, Students for Fair Admissions, the organization behind the end of af-

firmative action, received 65 percent of their funding from just three mega donors, including Donors Trust. Professor Clark, what are the ethical concerns of dark money groups, and do you think the affirmative action and student debt cases, for instance, ruled on this summer would have made it as far or been as successful without these donors?

Ms. CLARK. Congresswoman Lee, I believe that dark money and hidden financial influences on our political system and on our judicial system can undermine the ability of people at large to exercise their rights, participate. And so, while this is not a matter of legal ethics as such, I think that scrutiny of how hidden large expenditures influence our political system and judicial system is important.

Ms. LEE. Thank you. In the last decade, billionaire hedge fund manager, Paul Singer, has contributed over \$80 million to Republican political groups. Specifically, Singer gifted millions to the Manhattan Institute, a conservative think tank where he has served as chairman since 2008. The institute regularly files friend of the court amicus briefs with the Supreme Court, at least 15 this term, including one asking the Court to block student loan relief. Singer also gifted a luxury fishing trip to Alaska on a private jet to Supreme Court Justice Alito, who went on to decide the case blocking student loan relief for 40 million Americans, including me.

So, to sum all this up, back in 2009, as the Supreme Court prepared to decide Citizens United, one Nazi-obsessed vacation funding billionaire named Harlan Crow began funding Federalist Society leader, Leonard Leo's, scheme with Justice Thomas' wife to exploit the anticipated outcome of her husband's rulings. Their goal was to build a right-wing money machine allowing billionaires to fund changes to the judiciary and overturn years of judicial rulings they disagreed with, from abortion to environmental protections to LGBTQIA+ rights.

One of these Leo-and Koch-backed dark money operations, Donors Trust, then became the deep pockets, funding the end of affirmative action decided by the Court in July. And another billionaire hedge fund tycoon who flew another Supreme Court Justice Alito to another luxury vacation by another private jet as he gave to another conservative think tank working to block Biden's student loan forgiveness plan, got his way to the cases before the Supreme Court that same day in July, blocking debt relief for 40 million Americans.

To conclude, I want to say, like so many Black Americans, the one-two punch of student loan forgiveness and burden of action designed to cement this country's already existing racial wealth gap left me feeling deflated, and they punch down on so much talent, so much brilliance by shutting Black students out, it leaves us feeling like we are running out of options. Like, we are powerless against those with endless money and power to rig our legal systems to benefit themselves. And yet, my Republican colleagues seem far more concerned with protecting Johnson & Johnson's ability to shield themselves against liability from their carcinogenic talcum powder that caused Black and Brown women to develop ovarian cancer than protecting the American people against the

capture of our courts by dark money networks and the business of selling out our freedoms in exchange for control of our judiciary.

Ms. MACE. [Presiding]. The gentlelady's time is up.

Ms. LEE. Thank you, but someone went 23 seconds over the last—

Ms. MACE. You sound great. I know you sound great. You sound great.

Ms. LEE. Ms. Mace, but the last here went 23 seconds over.

Ms. MACE. Forty-five seconds over time. You are fantastic. We are over. We are done here. We are moving on.

Ms. LEE. Just used 15 of those seconds for me. I just want to make sure that we are fair.

Ms. MACE. OK. I would like to recognize my fellow Congressman from South Carolina, Representative Timmons.

Mr. TIMMONS. Thank you, Madam Chair. Professor Steinitz, litigation funders are waging litigation campaigns, even when there is, at least occasionally, no basis for liability. How are they able to make money if there is no factual basis for the lawsuit, and can you give us some examples of this?

Ms. STEINITZ. Well, in funding individual cases, there is generally no money to be made from funding non-meritorious cases or cases without a factual basis. But when cases are aggregated, either through the mass or class tort system or through portfolios, it is possible to increase profitability just by increasing the size of the pool, and it can be hard to figure out for defendants, how many of these cases are meritorious and which are not, and so that increases the leverage.

Mr. TIMMONS. And that increases the potential liability and, therefore, increases the incentive to settle for some amount, regardless of the facts of the case?

Ms. STEINITZ. It increases leverage against defendants, yes.

Mr. TIMMONS. So, the English law system has loser pays. A number of states have either adopted in part or in whole loser pay systems. Would it be reasonable for Congress to consider some sort of a loser pays model if certain thresholds are met?

Ms. STEINITZ. I think that loser pay would be an overkill, quite frankly.

Mr. TIMMONS. I am not saying across the board. So, you would just be opposed to any kind of a loser pays model at the Federal level entirely?

Ms. STEINITZ. I would have to think more closely about whether there is a way to tailor it to mass actions where there is, you know, there has been a finding—

Mr. TIMMONS. OK.

Ms. STEINITZ [continuing]. That funding has—

Mr. TIMMONS. Does anybody else want to comment on loser pays as it relates to this or—

Ms. WEIN. Congressman, I think one thing that we have to keep in mind is in mass torts, we are not talking about class actions, right, or one decision affects the thousands of potentially similarly situated individuals. In mass tort litigations in the United States today, we are talking about tens, if not hundreds, of thousands of claims amassed by lawyer advertising backed by litigation funding,

the majority of which are meritless, even if you accept the premise that there is the probable claim.

Mr. TIMMONS. OK. Thank you for that. Could you give an estimate of the legal costs Johnson & Johnson typically incurred when defending against a mass tort claim, Ms. Wein?

Ms. WEIN. Congressman, it is a difficult question to answer, particularly because each claim is different in size and mass. However, we do publicly disclose that. I mean, we publicly disclose our litigation expenses in our public filings. The one thing that is very interesting about disclosure is that, in the litigation, defendants are required to disclose their insurance coverage under Rule 26. Plaintiff lawyers are not required to disclose their third-party litigation funding, so equity parody in that space is what we are talking about here. We are talking about transparency. We are talking about disclosure. We are talking about regulating the ethical and fiduciary obligation between the funder and ultimately the claimant.

Mr. TIMMONS. What other avenues would you suggest Congress go down to curb the incentive structure for filing these claims?

Ms. WEIN. Congressman, I think there are a couple of areas to explore. The disclosure transparency, ethical obligations, and third-party litigation funding is one. The second I would recommend is some regulation around attorney advertising. There is data that shows that the attorney advertising that occurs, particularly with respect to medicines and medical devices harms patients, gets between the patient and doctor relationship and actually can cause immediate harm to patients when they see these advertisements and get scared.

There was a *New York Times* article in 2018 that I would refer you to that talked about how plaintiff lawyers were contacting patients, and encouraging them to get revision surgeries of their medical devices regardless of whether they needed them or not to create that mass. Another example I would point you to is in an anticoagulant litigation, where reports were submitted to FDA and the drug sponsor, demonstrating that patients went off their anticoagulant medication because they saw lawyer ads on television. They went off that medication, and the immediate result of going off an anticoagulant is stroke or, unfortunately, death.

Mr. TIMMONS. So, my understanding is the attorney fees structure on these cases are fairly aggressive. Is attorneys' fees structures an area that you would consider because, I mean, that is ultimately why they are pursuing these efforts because they can make enormous amounts of money if successful?

Ms. WEIN. Congressman, it is something that I think needs to be explored. If you think about the way mass torts are structured, ultimately what happens is a few cases are tried, but the thousands and thousands of cases that are not' tried but are parked in that litigation

Mr. TIMMONS. I do not want to get in trouble. Time is up. Thank you.

Ms. WEIN. Understood.

Mr. TIMMONS. I yield back.

Ms. MACE. Thank you, Mr. Timmons. All right. I would like to recognize Congresswoman Crockett next for 5 minutes.

Ms. CROCKETT. Thank you so much. I think my colleagues have made it clear that we have a corrupt Supreme Court, so I am going to spare you on that part. I do want to make sure that people understand how confused I have been in this hearing. No. 1, it sounds like my colleagues from across the aisle are somehow believing in climate change now, so I am excited to hear this because I thought it was a farce and a hoax, but we are talking about renewables and we care, so that is really good that we got that going.

Interestingly enough, I had the privilege or maybe not so much, when I started my legal career, my first job was to actually defend a large pharmaceutical company. I hated practicing law. I decided I needed to do something else. And so, most people only know me for doing civil rights or criminal defense or the things that really matter to individual people versus doing the bidding of large corporations. And so, I want to walk through this just a little bit and lawyer out a little bit because I am going to tell you from the onset, one of my issues with this whole concept is, No. 1, we have a little thing called attorney-client privilege.

And, in my opinion, we are starting to get dangerously close to piercing that privilege, that relationship between the attorney and their client when you start saying, well, how are you funding this and things like that, because let us say I am using my own money. Fine. Let us say I am using a third party. Why is it that the opposition has the right to know what my strategy is, or why it is, or who is helping me to do what. That is No. 1.

No. 2, if we are complaining about frivolous lawsuits, we have a thing called sanctions. For the lawyers here, has anyone heard of sanctions? Please raise your hand.

[Hands raised.]

Ms. CROCKETT. OK. Thank you. Have we heard of a thing called a 12(b)(6) motion? This is for anyone that practices on the Federal level, but it is a motion to dismiss. Unless you want to have a problem with your bar card, most defendants file a 12(b)(6) motion to dismiss for failure to state a claim very early on if there is a problem with litigation. Is that true or not? Can I get a raised hand?

[Hand raised.]

Ms. CROCKETT. OK. All right. Ms. Clark agrees with me. So, part of my issue was that we have certain mechanisms in place already, and the only thing that we have talked about, or seemingly one of the things that has been an overarching theme today, has been about the client advertisement, talking about the commercials, but the cost of actually prosecuting a case is more than a commercial. In fact, the commercial is not necessarily required from my experience. I have only been out of practice for a little less than a year now, but has anyone ever been involved in a lawsuit, same as Wein, where maybe an expert report was required?

Ms. WEIN. Congresswoman, in most of the cases—

Ms. CROCKETT. Especially mass tort. Uh-huh.

Ms. WEIN [continuing]. Expert reports are required.

Ms. CROCKETT. OK.

Ms. WEIN. The position in all mass tort cases today, millions, if not hundreds of millions of dollars are spent on advertising.

Ms. CROCKETT. I hear you because you have made that clear, but the reality is that people use third-party financing for things other



than just advertising, and let me be clear: it is not just going to affect Johnson & Johnson, who last time I checked is doing OK on their profits. But as I switch over and talk about my life as a civil rights lawyer, a lot of times you have a family who has someone who has potentially been killed by law enforcement. And a lot of times, we do not necessarily have the money to front for all the experts that are required just for you to have your day in court.

And so, this has been couched as something frivolous.

But if we want to be honest about it, it is my understanding that there was an \$18.8 million verdict that was just handed down by a jury to a man in California against your corporation as it relates to talcum powder. That was just in July, I believe, of this year. And so, this idea that the third-party financing or seeing something on TV, somehow then validates the claim, they still have to go through court, they still have to have expert reports, they still have to have attorneys, they still have to make sure that they take depositions, they still have to go through the entire discovery process. And a lot of times, at least in my experience, when it comes to defense, you end up with so much paperwork that you may end up needing a doc review team to go through all of the paperwork that is thrown on a simple plaintiff that may not have a large law firm that is behind them.

And so, what we are doing is saying if you have money, then you can access justice in this country, but if you do not have money, oh well, because we want to make sure that we know where your money is coming from, and that is just not fair. And the one thing that justice is supposed to be that, unfortunately, we still are trying to get to in this country, justice is supposed to be blind, and, unfortunately, I believe that this is the wrong venue. This is also the wrong body because we do have bar associations. We do have courts and judges that have the ability to issue sanctions. They have the ability to dismiss cases. And if we have some issues with the qualifications of judges, which I do, we know who we need to talk to about that as well. With that, I will yield.

Ms. MACE. Thank you. I will now yield 5 minutes to Congressman Fry.

Mr. FRY. Thank you, Madam Chair. Yes, aware, prior to Congress, I kind of have, I would say, an experience on both ends of this, right, both as a practicing lawyer and as a member of the General Assembly. From a practicing standpoint, I often saw times where a client or a prospective client might actually have a really great case in whatever they are doing, but they do not have the financial means in which to challenge or to get to a trial. You always quote a fee based on what you think it might cost to get to a trial because once you are in, it is oftentimes hard to get out as a lawyer if your client is not paying.

On the flip side, in the statehouse, I saw times, in Ms. Mace's district as an example, where the state of South Carolina paid an environmental group \$5 million not to challenge the dredging of the Port of Charleston. It was kind of a pre-suit agreement, and we have seen this a lot. We have seen where third parties, at least on the state policy side, where environmental groups will come in and challenge a permit for a road construction project or construction of a shopping mall, whatever the issue is, and in at least in South

Carolina at that time, there were so many cases devoid of actual facts so that if they were tried that day, if everything was on the table, they would have not succeeded on the merits, but it is always the threat of litigation, the threat of the delays in a project that really concern me.

And so, when we talk about third-party funding, you know, I am kind of struck. Where do we find that balance? Where we get rid of the B.S. that is out there and get to the merits of a case, but also preserving, quite frankly, a David versus Goliath type of mentality where you might have a great case and it needs to be litigated in the courts. And you probably will prevail on the merits, but the financial costs—I mean, sometimes trials or courts turn into a war of attrition, who has the most resources in which to succeed on the case.

And so, to me, Ms. Steinitz, your testimony, you state that litigation funding is a utility, and it can be used or abused, depending on the context. Do you believe that there is a line that can be drawn around third-party funding, and if so, where might that be?

Ms. STEINITZ. Well, there are a bundle of issues with respect to litigation funding. So, one issue is disclosure, and that has to be context-specific, and it may be best to empower but also leave it to judges to tailor it to the specific context. There are issues with plaintiffs losing control, and that requires imposing ethical obligations on funders so that we have a realignment such that clients have the—

Ms. MACE. Can you speak into the microphone, please? We cannot hear you.

Ms. STEINITZ. Yes, then I cannot see the Congressman, but yes. So, that we have a realignment that we had before third-party funding entered into the space, so that whoever is on the plaintiff side, lawyer and funding, has ethical obligations toward the party that they are funding, so that is another issue. So, there are multiple issues that would need to be addressed.

Mr. FRY. On the ethical thing, just curious. Do you think that those exist right now on the defense side? So, on the defense side, oftentimes you see maybe the insurance company come in. Do you think that their standards are very different than the plaintiffs' world?

Ms. STEINITZ. Yes, their standards are very different. The insurance industry is heavily regulated, including through ethics and in certain circumstances fiduciary duties, and there is nothing equivalent to that on the plaintiff side.

Mr. FRY. You have proposed for both legislators and courts that there needs to be kind of flexible, discretionary balancing test. Can you expand on that, what you mean by that?

Ms. STEINITZ. Yes, with respect to disclosure because disclosure can be a valuable tool to sort of understanding whether there is problems in terms of who is providing the funding or under what terms in some instances, but in other instances, disclosure can be used just for tactical reasons, in order to make it more difficult for plaintiffs to pursue their case and figure out how much funding they have to just spend that money down. And so, it is very hard, and, in fact, impossible to just draw a clear line that would be applicable and fair in all cases. So, it is best to let judges and em-

power judges to balance the various private and public interests of all of the litigants and the court system with respect to the type of case that is before them.

Mr. FRY. Thank you, Ms. Wein—is it Wein or Wein?

Ms. WEIN. It is Wein, Congressman.

Mr. FRY. Wein. Thank you. I want to ask you a question. Can you elaborate on the types of control that third parties often exert over the direction of a case?

Ms. WEIN. Congressman, it is hard to tell you the answer to that question because we do not generally have access to the contracts that set forth those control provisions. But what I would say, in the interest of time, I direct you to the *Cisco v. Burford* case, which gives us some insight, the IMF Bentham best practices guide, the White Lily case, the *Bolling* case, those give us some insight into the control that can be exerted.

Mr. FRY. Thank you, Madam Chair, and with that, I yield my time.

Ms. MACE. Thank you. I would now like to yield 5 minutes to my friend across the aisle, Mr. Moskowitz.

Mr. MOSKOWITZ. Thank you, Madam Chair. I appreciate it, and it is a pleasure to be here at this lovely filler hearing. It has not gone, I do not think, exactly as my colleagues thought it would go.

You know, sometimes when I sit here, I often think to myself, who is in the room when these things get planned out and let us decide who we are going to call. Like, I do not know, let me find some sympathetic people to bring to this hearing today. Let me find a giant bankrupt corporation. Let me find an oil guy to talk about the Gulf of Mexico 12 times and how our national parks are getting better because of the Gulf of Mexico, not really during the BP oil spill, but we will not go into that.

I mean, we talk about judicial activism. I mean, I just I often think to myself, like, was it not judicial activism when we had a judge meet with U.S. Senators, and say privately that *Roe v. Wade* was precedent on precedent, and then go in front of the Senate, under oath, and say the same thing, and then in their very first time, right, take back a law that had been there for 50 years. That is not judicial activism.

And by the way, it would be an anomaly except that did not happen once. It happened twice. Two judges, appointed by Donald Trump that went and met with Senators and said *Roe v. Wade* was precedent on precedent, and then went in front of the Senate under oath and said the same thing and then get on the Court, and in their very first couple of years, what do they do? They get rid of a law that had been there for 50 years.

And so, listen, I am more than happy to listen to the cries of judicial activism, but we can no longer sit here and just pick when we like it and when we do not because it fits the politics of our time or the narrative that we are interested in. We sit here and we hear about transparency. We want judicial transparency. I mean, it is almost like when this hearing was decided, maybe it was so long ago now that it was not in the news. I mean, boy, judicial transparency is really timely.

So, yes, thank you for bringing that forward about transparency in the legal system. I am not sure that the American people are

wondering about third-party litigation funding, but they are definitely worried about transparency with the highest court in the land where there is no remedy when you have ethical violations other than impeaching a judge and the Senate.

And so, listen, we should do a whole hearing on judicial transparency because I think it is timely. I think the American people want to hear about it. You know, it is just fascinating to me as we continue to sit in these hearings in Oversight. I mean, we have had 9 months of hearings on a very specific topic. Those have gone so well. We are going to rebrand those hearings and hit the video game reset button, start all over again, right? I mean, it is just interesting. We sit here, we hear our colleagues bring up certain things like, oh, the Biden family took money from a foreign entity, right? And it is just like, well, really? I mean, do they really not know that Jared Kushner took \$2 billion from the Saudis? I mean, by the way, they go on Twitter and blame the Saudis for 9/11. But, then Jared Kushner, who, by the way, was not a wealth expert before he worked in the White House, nor was he a Middle East expert before he worked there, gets \$2 billion from the Saudis, and they do not have any questions.

And I just think that the American people recognize that they have no credibility. It is why the stuff they have been selling in this Committee for 9 months has not translated, which is why we have got to start all over again. You do not have any credibility when you only want to look at one side of the coin, right?

And so, listen, I appreciate the time, Madam Chairwoman, but I just feel like I am not going to beat up on you guys anymore. I think that it has been quite obvious the way this hearing has gone, and so I want to thank all the witnesses for coming today. It is probably not what you bargained for, what they told you this would be like, but I appreciate you all for coming, and I yield back.

Ms. MACE. Thank you. I appreciate that, and I will now recognize myself for 5 minutes. It has been an interesting hearing. You know, it has been a race of how many times can you say the word "Donald Trump." It is just Trump this, Trump that, Harlan Crow this, Harlan Crow that, Justice Thomas, and then then we just heard the Kushner. You know, if the left wanted to investigate Jared Kushner, they had the White House, the House, and the Senate, they had every ability to do that in the last Congress, and they chose not to, so I have very little patience for that.

And you know, how many times is the left going to talk about dark money? Well, let me tell you, Joe Biden is the definition of dark money. How much money did his family get paid off, and how are his bills paid? And we are not starting over with an impeachment inquiry, and impeachment inquiry actually expands our subpoena power and will allow us to hopefully get more access to more bank records to prove out the SARS report, which we are not allowed to share. That is the elephant in the room. Joe Biden got bribed, and it was to the tune of millions and millions of dollars, and the left wants to normalize the bullshit of bribery. Like, I just cannot get over the fact that we are going to normalize this, and we are calling Joe Biden's bribery, "a specific topic." No, it is bribery. It is money laundering, it is prostitution rings, and I am not a conspiracy theorist for putting these theories out there.

Our investigation, there is evidence and it is not, you know, hard evidence is what they are saying now. They are moving the goalposts from, oh, we just need evidence. Now, oh, you need hard evidence. You do not have it. There are texts, there are emails, there are phone calls. There are lies that Joe Biden has told. Every single time the President has been asked about these bribery allegations, that guy has lied to the American people. He has lied to the mainstream media, and the mainstream media and the left just want to sweep this under the rug and pretend it has not happened, and it has, and this Committee will continue its investigation.

We will have the impeachment inquiry, and we will ultimately get to the bottom of it because the American people deserve the truth and nothing but the truth, and you should not trust our words of Congress up here. Trust the evidence that has come out. Look at it for yourself. Look at the fact that there were over 50 intel officers that wrote a letter, put it on paper, and lied to the American people to tell you the laptop was fake. The laptop was real, and, like, I am just tired of the bullshit. I know the American people are tired of the bullshit. It is time to tell the American people the truth, no matter your political affiliation or party. It does not matter.

And so, I wish that we could be nonpartisan in the way that we do this. I wish that we could call out both sides. I am someone who has called out my party. I have voted to hold my own party in contempt before Congress. I have dealt with the fallout from that because I am calling the balls and strikes, and it would be really great if both sides of the aisle could do the same thing as well.

So, with that, I will try to get back on topic here and ask a few questions of our witnesses today, and I will try to pull them up. I want to talk about EVs just a little bit. In Charleston, South Carolina, low country in South Carolina, we rely on fossil fuels for vehicles. We also rely on electric vehicles. I have both. And my first question I would like to ask Ms. Lucas is that EVs require 6 times more critical minerals than their internal combustion engine counterparts. Due to skyrocketing global demand for these resources, the prices of components necessary to produce an EV battery rose 200 percent in 2022. So, if domestic mining projects are halted due to ongoing litigation, which is happening, you know, how will this impact the prices of vehicles for consumers looking to purchase an EV, in your opinion?

Ms. LUCAS. Every mile that those minerals have to travel is extra cost. Every mile that those minerals have to travel is extra CO2 into the atmosphere, so the cost is not just about what we as consumers pay.

Ms. MACE. Uh-huh.

Ms. LUCAS. The cost is what our conscience pays as to who is digging those minerals up out of the ground and what protections are in place. The true cost of our consumerism: it is not as simple as the cost of the vehicle.

Ms. MACE. And then your critical minerals are used in infrastructure projects as well as, like, electrical transmission lines. How could increase mineral prices impact electricity prices for consumers?

Ms. LUCAS. As we look at transitioning our Nation to one powered more by clean energy, the solar panels and the windmills are going to be put in places where the energy is not necessarily being used. So, we are going to have to increase transmission lines across our country, and copper is the metal of electrification. It is the one that carries, so we can expect that those costs will increase as we need to bring in more of those minerals into the supply chain.

Ms. MACE. All right. Thank you, and one last note of business. I would like to say thank you to the many groups and organizations that reached out in anticipation of this hearing today with letters outlining their stances on the issue. I would like to enter into the record letters to the Committee from the American Tort Reform Association, American Property Casualty Insurance Association, the Advanced Medical Technology Association, the Institute for Legal Reform, the International Legal Finance Association, National Association of Manufacturers, Jerry Theodorou at the R Street Institute.

Without objection, so ordered.

Ms. MACE. All right. OK, I would now like to yield 5 minutes to Ms. Ocasio-Cortez.

Ms. OCASIO-CORTEZ. Thank you, and I thank you for the listing of all the special interests involved in addition in this hearing.

Now, when I first heard that the Republican side was going to be calling a hearing on third-party influence in our courts, I was so excited because I thought, finally, we are going to address the biggest scandal in American democracy that we are currently having right now, which is the extraordinary corruption and wholesale purchase of members of the Supreme Court. And I also find it amusing that we just heard from the Republican side, oh, why do we want to talk about this? Because women have lost the right to choose, because indigenous people have lost rights, because minorities have lost rights, because working people across the country have lost rights due to this level of corruption.

And if we are going to talk about third parties, let us talk about the Federalist Society, which has not only had deep ties to Justice Clarence Thomas and his wife Ginni, but has also helped choose judicial nominees for the Republican Party and directed multimillion dollar media campaigns to confirm them, including a multimillion dollar media campaign for Justice Alito, who seems to like using the Wall Street Journal as his personal press secretary, but I want to dig into a little bit about the influence here.

In 2008, Leonard Leo, who has ties to the Federalist Society, also organized a luxury fishing trip to Alaska inviting a billionaire to join, Paul Singer, and when Paul Singer accepted, Leo asked if he could fly Justice Alito on his private jet to Alaska. So, right here is Paul Singer, a multibillionaire, and a head of a hedge fund, works in hedge funds, and here is Supreme Court Justice Samuel Alito, a/k/a one of the justices turning over student loan cancellation and turning over women's rights to choose over their own body and more. Now, Professor Clark, are you familiar with 5 U.S. Code 13104?

Ms. CLARK. I am so sorry, 5 USC 131—

Ms. OCASIO-CORTEZ. Zero-four.

Ms. CLARK. Is that the new codification of the Ethics in Government Act?

Ms. OCASIO-CORTEZ. Yes. It is specifically on, and it requires reporting and disclosure requirements to government officials, yes.

Ms. CLARK. Yes.

Ms. OCASIO-CORTEZ. And I am going to draw attention to 13104 (A)(2)A. This section requires disclosure of the identity of the source, a brief description and a value of all gifts exceeding minimum value. Professor Clark, are you aware how much the minimum value of gifts was in 2008?

Ms. CLARK. I would guess it would be about \$400.

Ms. OCASIO-CORTEZ. Yes, a little bit under, \$335 as the amount of gifts in gifts that Supreme Court justices are allowed to receive, which is actually balling compared to Members of Congress, we only are allowed to receive gifts under \$50. So, the Supreme Court, you can give them free air pods, you can give them really nice dinners, and they do not have to report any of that. But so we are clear, any gifts above that do need to be disclosed, correct?

Ms. CLARK. Correct.

Ms. OCASIO-CORTEZ. Yet, according to ProPublica's reporting, Justice Alito was flown on a private jet on this luxury trip, and if he had chartered a similar jet, it would have cost more than \$100,000 each way, a 100 grand. Now, Professor Clark with the cost of about \$100,000 per flight, would Justice Scalia be required to disclose this trip?

Ms. CLARK. I believe you are referring to Justice Alito.

Ms. OCASIO-CORTEZ. Alito, yes.

Ms. CLARK. Under the Ethics in Government Act, disclosure would be required.

Ms. OCASIO-CORTEZ. And did he?

Ms. CLARK. My understanding is that he did not.

Ms. OCASIO-CORTEZ. He did not. So, we have a billionaire who runs a hedge fund with business before the court. In fact, we saw several cases before the court, and on top of that, he also had 3 days at a luxury retreat, which would charge over \$1,000 a night, and he did not disclose that either.

Now, in the years since we have actually seen the billionaire who generously sponsored this trip, Paul Singer did business before the court at least 10 times in cases where the legal press and mainstream media often covered his role. So, it was publicly known that he had business before the court, and in 2014, in fact, Justice Samuel Alito, along with the Court, agreed to resolve a vital issue in a decade's long battle between Singer's hedge fund and the Nation of Argentina. And do you know if Alito recused himself from this case?

Ms. CLARK. I believe he did not.

Ms. OCASIO-CORTEZ. He did not recuse himself from this case. And in fact, he used his seat on the Supreme Court, after all of this, to rule in Singer's favor and following the decision, Mr. Singer's hedge fund was ultimately paid \$2.4 billion because of this ruling, not a bad return on investment for a fishing trip there. Now, Professor Clark, would a Federal judge in a lower court be required to recuse himself?

Mr. FRY. [Presiding.] The gentlelady's time has expired. The gentlelady's time has expired.

Ms. CLARK. May I answer the question sir?

Mr. FRY. I think at the discretion of the Chair, yes, you can answer the question.

Ms. CLARK. Thank you, sir. Yes, there is a Federal statute. I believe it is 28 USC 455 that does require recusal by both justices and judges under certain circumstances.

Ms. OCASIO-CORTEZ. Thank you, and I yield back.

Mr. FRY. Thank you. The Chair now recognizes the gentleman from Tennessee Mr. Burchett for 5 minutes.

Mr. BURCHETT. Thank you, Mr. Chairman. Professor Steinitz, did I get that right, ma'am? Is your mic turned on?

Ms. STEINITZ. Yes, sir.

Mr. BURCHETT. OK, thank you. Do not call me sir, ma'am. You are fine. Got to call these other knuckleheads sir and ma'am. Just, I am good with Tim. Thank you. Are there Federal laws that are requiring the disclosure of third-party litigation financing?

Ms. STEINITZ. Currently, there are no laws that directly require that, no.

Mr. BURCHETT. Do you know the total number of litigation investors operate in the U.S.?

Ms. STEINITZ. No, the total number is not known.

Mr. BURCHETT. OK. Do you generally know the rate of return for these investors?

Ms. STEINITZ. No. That is also private information.

Mr. BURCHETT. OK. Do you know the total amount of funding in the third-party litigation financing industry?

Ms. STEINITZ. There are only estimates.

Mr. BURCHETT. Just estimates?

Ms. STEINITZ. Correct.

Mr. BURCHETT. Would you share some of those estimates with us? I am not a lawyer. I know there is a word for it. I have seen it on television, but I am guessing or something. I am not guessing, but all right. Well, Professor, let me ask you this. Have you heard of a company called Burford Capital?

Ms. STEINITZ. I have, yes.

Mr. BURCHETT. Yes, ma'am. Are you aware that in 2018 Burford Capital reached an agreement with a sovereign wealth fund to provide over \$1 billion in capital for Burford's litigation investments?

Ms. STEINITZ. I have seen a press release. Yes.

Mr. BURCHETT. So, what these folks do, is they just invest in these things and hoping for a return obviously?

Ms. STEINITZ. Correct.

Mr. BURCHETT. Yes, ma'am. So foreign countries can fund U.S. litigation.

Ms. STEINITZ. They can invest in third-party funders that invest in litigation in the U.S., yes.

Mr. BURCHETT. Yes, ma'am. So, would this mean that foreign adversaries and other bad actors could potentially exploit our litigation system to advance their home industries?

Ms. STEINITZ. Potentially, yes.

Mr. BURCHETT. Could litigation funded by foreign adversaries potentially delay technology critical to national security?



Ms. STEINITZ. Potentially, yes.

Mr. BURCHETT. Could third-party litigation funding potentially allow foreign adversaries to access privileged information?

Ms. STEINITZ. Potentially, yes.

Mr. BURCHETT. Without Federal litigation or regulations, excuse me, is it possible to determine the extent to which non-U.S. persons or entities are engaged in third-party litigation funding?

Ms. STEINITZ. No, without regulation, there is no way to do so.

Mr. BURCHETT. OK. OK, Professor, let me ask you this. Are you aware in 2018, that the Biden Administration settled a lawsuit with Sierra Club and other environmental groups that sued the National Marine Fishery Service?

Ms. STEINITZ. I am not familiar with that, no.

Mr. BURCHETT. OK. Do you know who pays when the government settles a lawsuit with a plaintiff?

Ms. STEINITZ. The taxpayer.

Mr. BURCHETT. The taxpayers. Yes, ma'am. Thank you. See, that is what is called a leading question, if you did not know that. I do know that. In cases where a plaintiff successfully sues the government, who pays the judgment?

Ms. STEINITZ. Successfully sues the government, the taxpayer ultimately.

Mr. BURCHETT. Yes, ma'am. So, foreign adversaries and other bad actors could fund litigation threatening national security, and then have it paid off by the American taxpayer?

Ms. STEINITZ. If they are litigating, or funding litigation against the U.S. Government, yes.

Mr. BURCHETT. OK. Ms. Lucas, you are an environmental scientist, is that correct?

Ms. LUCAS. Water resources, sir.

Mr. BURCHETT. OK. But you would consider yourself a scientist?

Ms. LUCAS. Yes.

Mr. BURCHETT. All right, good. Do you have concerns that some of the financiers of these lawsuits, especially those that claim to litigate in the name of climate justice could actually be negatively impacting the environment in the long run?

Ms. LUCAS. That is one of my concerns that we will not get up to speed in time to meet our goals of the Paris Agreement. We will not meet our goals for the U.S., and we will not meet our goals internally for our state that is set 100 percent clean energy goal by 2040.

Mr. BURCHETT. OK.

Ms. LUCAS. We need minerals to build those materials.

Mr. BURCHETT. All right. Ms. Wein, yes, I get that name right? Wein or Wine?

Ms. WEIN. It is Wein.

Mr. BURCHETT. Wein. Ms. Wein, what would be the long-term impacts of our economy if this broad network of activists went unchecked? And its billions of dollars spent annually were not disclosed?

Ms. WEIN. Congressman, I think we are seeing it now, right, we are seeing the amassing of litigation of unmeritorious claims resulting in multibillion dollar settlements, money that could be used to further innovation, funds that could be used to further science,

funds in our case that could be used to change health for humanity, which is what the thousands of people employed by Johnson & Johnson try to do every day.

Mr. BURCHETT. OK. Thank you, ma'am. Thank you, panelists, Mr. Chairman.

Mr. FRY. Thank you, sir. The Chair now recognizes Ms. Porter from California for 5 minutes.

Ms. PORTER. Thank you very much. Ms. Wein, in your testimony, you describe some of the hardships of this kind of litigation onto a company like Johnson & Johnson. Would you say that these kinds of mass tort claims are expensive to defend?

Ms. WEIN. Yes, Congresswoman.

Ms. PORTER. And to the tune of maybe even tens of millions of dollars, \$10 million to \$20 million a month in expenses?

Ms. WEIN. It is hard to say, each one is different.

Ms. PORTER. But millions.

Ms. WEIN. Yes, Congresswoman.

Ms. PORTER. Has it had an effect on Johnson & Johnson's overarching financial position, its stock price, its bottom line, its ability to invest in lifesaving R&D, for example?

Ms. WEIN. Congresswoman, every expense has an impact, and so while I cannot quantify it for you right now, it does have an impact.

Ms. PORTER. Johnson & Johnson, in its public security filings in 2019, disclosed \$1.2 billion in loans and notes payable, normal debt. In 2020, it disclosed \$2.6 billion, almost double, more than double. In 2023, that amount had jumped to \$11.7 billion. So, Johnson & Johnson is taking on more loans over time, or notes or debt over time. Has any of that been all driven or related to the expenses, the incredible hardship that you describe of defending against these claims?

Ms. WEIN. Congresswoman, while I could not specifically answer that question for you, I think it is interesting to note that we disclose our expenses, we disclose our source of revenue. The difference between third-party litigation funding and the defense of these cases is that there are no disclosure requirements there. There is no transparency there.

Ms. PORTER. So, Ms. Wein, Johnson & Johnson discloses the names and terms and details of its loans?

Ms. WEIN. Congresswoman, that is not what I said. I said that we make our public disclosures as required by the SEC rules. You—

Ms. PORTER. All you disclose is the amount of a debt. You do not give any details about the names and terms. I mean, Johnson & Johnson backed LTL in the subsidiary that it created to the tune of a \$61 million funding agreement that J&J, when it did the Texas two-step and split it into two companies, one with the assets and one with the liabilities. You entered into a \$61 million funding agreement. Did you disclose the terms of that?

Ms. WEIN. Congresswoman—

Ms. PORTER. LTL was in bankruptcy.

Ms. WEIN. Correct.

Ms. PORTER. LTL's funding was coming from J&J. Did you disclose the terms of the \$61 million funding agreement?

Ms. WEIN. Congresswoman, unfortunately, I do not have an answer to that question for you right now. I am happy to take it back.

Ms. PORTER. Haven't J&J lawyers insisted that the sworn deposition testimony about that financing agreement be deemed confidential? Haven't they argued that to Judge Kaplan in New Jersey and the bankruptcy court that LTL management your subsidiary's funding and financing for the purpose of defeating this litigation must be kept confidential, even as you sit here today, and try to tell us that the plaintiff should have to disclose all of the details of their financing?

Ms. WEIN. Congresswoman, respectfully, I think that we are talking past each other. I think those are two different things.

Ms. PORTER. Why?

Ms. WEIN. Funding agreement related to the structure of bankruptcy, as I understand it, we are talking about—

Ms. PORTER. Excuse me, Ms. Wein. The bankruptcy only exists and LTL management as a company only exists as a response to the talc litigation. It did not exist until you tried to defend against the talc lawsuits. J&J was the third-party funder of the LTL company that went into bankruptcy to deal with the talc claims. Your company argued in court that those should be confidential, and yet you want the other side, the plaintiff side, to have to disclose all of their funding. I think that is hypocritical. I think it is the same.

Ms. WEIN. Congresswoman, respectfully, I disagree. I do not think it is the same.

Ms. PORTER. Why?

Ms. WEIN. Because as I explained previously, one has to do with the filing of bankruptcy and the funding agreement related there too. The other has to do with the pursuit of a third-party litigation funding that is intended—

Ms. PORTER. Pursuant to the bankruptcy, J&J was a different entity than LTL. That was your choice. That was your structuring choice to split those companies and create two separate entities, which made J&J a third-party funder of the LTL litigation.

Ms. WEIN. Congresswoman, respectfully, I disagree. It related to the filing of the bankruptcy plan.

Ms. PORTER. OK. I yield back.

Mr. FRY. The gentlelady yields. The Chair now recognizes the gentlelady from Colorado, Mrs. Boebert, for 5 minutes.

Mrs. BOEBERT. Thank you, Mr. Chairman, and thank you to our witnesses who have joined us today. Ms. Clark, in your testimony, you agree that third-party litigation funding does pose ethical risks, such as conflicts of interest, correct?

Ms. CLARK. Correct.

Mrs. BOEBERT. Fantastic. Then why did you spend most of the time off-topic discussing the "ethics crisis" currently facing the Supreme Court?

Ms. CLARK. Congresswoman Boebert, I believe that relative to the ethics challenges in the third-party litigation funding context, the crisis, the ethics crisis at the Supreme Court—

Mrs. BOEBERT. Yes, yes.

Ms. CLARK [continuing]. Is much more grave and—

Mrs. BOEBERT. OK. So—

Ms. CLARK [continuing]. Significant.

Mrs. BOEBERT. Thank you, Ms. Clark. What really it sounds like is an ethical concern to me is the constant wave of frivolous litigation from environmental extremists that deprive communities of employment opportunities, improvements to outdated infrastructure, cheaper products, corporate tax revenue, and economic certainty. So now, Ms. Clark, are you familiar with Earth Rights International?

Ms. CLARK. I am not.

Mrs. BOEBERT. ERI is representing Boulder County in a lawsuit against ExxonMobil and Suncor Energy to “recover the costs associated with climate change impacts.” Now, would you happen to know who might fund Earth Rights International? Not knowing of the group maybe you do not’ know exactly who funds this group.

Ms. CLARK. Correct.

Mrs. BOEBERT. Correct. So, ERI is funded by several wealthy anti-oil and gas funds, including George Soros’ Open Society Foundations, the Rockefeller Family Fund, the Rockefeller Brothers Fund, and the Tides Foundation. In this lawsuit, specifically in Boulder County, the Rockefellers have provided direct funding to the lawyers in this case, another outside organization, supporting the plaintiffs received a \$200,000 grant from the Rockefeller Brothers Fund less than 2 months before the lawsuit was filed. Ms. Clark, do you find it at all concerning that these extreme environmental groups are attempting to circumvent this body by legislating via lawsuit?

Ms. CLARK. Any time a third-party has a financial arrangement to finance legal fees, there is a potential for conflict of interest and there are rules to address it, but beyond that, I am not familiar with this particular group.

Mrs. BOEBERT. So, I would see this as them attempting to circumvent this very body just via lawsuit and our legislative process. In this Soros funded lawsuit, ERI is making a baseless claim that oil companies are responsible for the destructive wildfires ravaging across my home state without a single mention of the several wilderness area designations.

Now, a wilderness area designation that prevents us from actually managing our forests, and it makes it impossible, in fact, to actively manage that land. These policy decisions are debated and discussed by experts and congressional committees, which Democrats and Republicans agree we need to actively manage our forests. And that is why the founders gave this authority to Congress, not the Rockefeller families, to sue job creators, to shut down operations that will only hold up critical energy development projects for years, especially in my state. Increased project costs contribute to skyrocketing gas prices and discourages future development, where my communities that I represent in Colorado’s 3d District are literally being regulated into poverty because of these extremist environmentalist groups and their lawsuits that are circumventing our job here in Congress. Now, Ms. Clark, do you know how many jobs depend on the survival of the oil and gas industry?

Ms. CLARK. I do not.

Mrs. BOEBERT. The oil and gas sector supports 69,000 direct jobs and 271,000 indirect jobs in my home state of Colorado. These are very good jobs. They are good-paying jobs, and out West, George

Soros and the Rockefeller families are trying to destroy, in an attempt to legislate through the courts. This is a huge problem, and if they fail, at least they can go home as winners with a taxpayer-funded settlement. Do you know how much money Federal Government agencies spend settling these ridiculous lawsuits?

Ms. CLARK. May I answer?

Mr. FRY. Yes, you can.

Ms. CLARK. I do not know.

Mrs. BOEBERT. So, former Director Ash testified that the Agency spent approximately 75 percent of its listing program budget on "substantive actions required by court orders or settlement agreements from litigation." Seventy-five percent. Now, that sounds like a very real ethics crisis to me, Ms. Clark. Mr. Chairman, I yield. Thank you.

Mr. FRY. Thank you. Pursuant to the previous order, the Chair declares the Committee in recess, subject to the call of the Chair. We plan to reconvene 10 minutes after votes.

The Committee stands in recess.

[Recess.]

Mr. GROTHMAN. [Presiding.] The Committee will come to order. Mr. Goldman.

Mr. GOLDMAN. Thank you, Mr. Chairman, and I thank our witnesses for being here.

Before I dive into some of the issues that we have been called here to discuss today, I want to respond to my friend and colleague from South Carolina and some of her allegations and statements that she made about the so-called impeachment inquiry. I believe that she stated that Joe Biden got bribes, committed money laundering, and engaged in a prostitution ring. She says there are texts, emails, and phone calls, but then she says that we should trust the evidence itself. And with that, I agree because the evidence itself shows absolutely no connection between Joe Biden and any of those allegations.

So, we are now entering into what is so-called an impeachment inquiry, ostensibly because the Republicans say they need more information, and that somehow, by the Speaker of the House unilaterally declaring an investigation, an impeachment inquiry, that changes this Committee's authority. It does not. This Committee has been investigating these allegations for more than 8 months. This Committee of House Republicans have obtained more than 12,000 documents, pages of bank records, more than 2,000 suspicious activity reports, numerous hours of witness testimony, texts, emails, and the problem they have is not that they cannot get the evidence. The problem they have is that the evidence does not support their allegations.

And so, why are we going to spend the next few months on a bogus and sham impeachment inquiry? Because Donald Trump wants them to, and Donald Trump has been calling them and urging them to do it because he was impeached twice. One of those impeachments of Donald Trump was because he tried to extort the President of Ukraine to investigate Hunter Biden. The President of Ukraine refused. Unfortunately, House Republicans do not have the spine that President Zelenskyy has, and they are now doing Donald Trump's bidding.

Let me move on to the topic today, and I know that my colleagues would like to narrowly focus this hearing on their sudden grave concerns about third-party litigation funding. That is right. My Republican colleagues are having a hearing to criticize and restrict the free market from investing in litigation. Well, how could that possibly be that the party of free markets would want to restrict the free market? Well, I know why. Because big corporations and special interests do not like the fact that independent investors can support litigation that otherwise would not be able to be brought because of the expense.

And I also find it ironic that Republicans are criticizing third-party funding in legal proceedings, when they themselves have engaged in the same kind of third-party funding.

And I would like to ask unanimous consent to introduce for the record an article entitled, "FBI Whistleblowers Admit Taking Money from Ex-Trump Official."

Mr. GROTHMAN. We will take that.

Mr. GOLDMAN. Thank you, Mr. Chairman. Now, it is no surprise that the Republicans are doing the bidding of the same special interests who have been spending massive amounts of dark money to control the Supreme Court. But the odd thing is that we are here talking about the ethical issues of third-party litigation funding, and not the ethical issues in the Supreme Court.

In June, I led a letter of 18 former prosecutors and law enforcement officials, urging the Chief Justice to abide by his own declaration that he would take care of these ethics concerns and saying that if he were to do that, appropriately, and seriously, he would first have to establish an independent investigative body within the court that can provide transparency and accountability, and, two, that he would have to establish a dedicated ethics council to provide advice to the justices on their ethical issues.

Unfortunately, his response to that letter just simply thanked me for writing it, and that is not good enough. And so my time is up, but I would urge my colleagues on the other side of the aisle who ostensibly are concerned with ethics that they hold a hearing on the dramatic and absurd ethical lapses of Supreme Court Justices and make sure that we implement an ethics code on the Supreme Court, which are the only nine justices in our entire Federal judiciary who do not have to abide by our ethics code, and I yield back.

Mr. GROTHMAN. Mr. LaTurner.

Mr. LATURNER. Thank you, Mr. Chairman. Thank you all for being here. You have got to pan the whole area to find me who is speaking, I know.

We are gathered today to address a disturbing issue at the intersection of politics, activism and corporate influence, the growing trend of liberal activists and private equity firms using dark money to fund frivolous lawsuits aimed at stifling industrial activity, political discourse, and civic engagement. A fundamental tenet of our legal system is that those who have been harmed can seek a remedy by bringing a claim to be adjudicated before the courts.

When a remedy is obtained, it is supposed to go to those who are harmed. Increasingly, that is not the case in today's legal system, as some courts are being used to pursue social activism for special interests. Even more concerning is the fact that wealthy foreign ac-

tors with no skin in the game have begun backing scores of private law firms to sue American businesses for billions of dollars in damages. These payments mean the law firms have all their costs subsidized, and yet the same law firms are hired by state and local governments on a contingency fee basis.

Ms. Steinitz, how are you today? Did I get it right, Steinitz?

Ms. STEINITZ. You did, yes. Thank you.

Mr. LATURNER. OK. Isn't it true that law firms receiving funding to cover their expenses and fees from wealth special interest groups, who also get contingency fee agreements from local and state governments, have no risk while they stand to recover tens of millions of dollars, if not more, from contingency fee arrangements?

Ms. STEINITZ. I am not familiar with those arrangements, so I cannot comment.

Mr. LATURNER. In recent years, a number of investors including Arabella advisors, George Soros and Leonardo DiCaprio, as well as foreign funders like Christopher Hone and Hansjorg Wyss, have funneled tens of millions of dollars into organizations that fund climate litigation, targeting American energy producers. Ms. Steinitz again, are you aware that several nonprofit organizations backed by Soros, DiCaprio, and Wyss, for which these wealthy individuals likely seek tax breaks, have also made donations directly to law firms that bring climate-related lawsuits?

Ms. STEINITZ. I am not familiar with that, sorry.

Mr. LATURNER. Not familiar with anything that I am saying right now?

Ms. STEINITZ. No, afraid I am not.

Mr. LATURNER. OK. The Soros-backed new venture fund and the DiCaprio-backed resources legacy fund have given millions of dollars to the California law firm Sher Edling, which is responsible for bringing over a dozen climate litigation cases. In addition to this special interest funding, Sher Edling is entering into fee agreements where it stands to make tens of millions of dollars. And it does not end there, Michael Bloomberg is funding a program through NYU Law, where they place attorneys in state attorneys general offices where those embedded attorneys are working on some of the same climate litigation, where Sher Edling is also receiving a contingency fee. Ms. Steinitz, does that arrangement create concerns for you about the influence of wealthy special interests on litigation purportedly brought on behalf of taxpayers, and who really plans to benefit?

Ms. STEINITZ. Again, I am not familiar with these particular arrangements, but the general point that we should be interested as a public in who influences the various branches of government, including the judiciary, is a point I agree with.

Mr. LATURNER. Thank you very much. Mr. Chairman, I yield back.

Mr. GROTHMAN. Thank you. Mr. Raskin?

Mr. RASKIN. Thank you kindly, Mr. Chairman, and I was glad that my colleague, Mr. Goldman, from New York was able to answer some of the surprising things that we heard from our esteemed colleague, Ms. Mace, right before we had our break. And, you know, it is very clear that there is no evidence that has turned

up over the last 7 months that Joe Biden is guilty of any criminal wrongdoing, any high crime and misdemeanor, much less prostitution, bribery, money laundering, or any of the crimes that were set forth in that laundry list that Ms. Mace offered at the end, so I do hope she will clarify that.

Let us see. Ms. Wein, you are here as the assistant general counsel of Johnson & Johnson. Do I have that right?

Ms. WEIN. Yes, sir.

Mr. RASKIN. And Johnson & Johnson paid \$5 billion out in the opioid litigation, and \$4 billion in the talcum powder litigation. Is that right? Those are numbers roughly, correct?

Ms. WEIN. Congressman, as far as I am aware.

Mr. RASKIN. OK. So, are you here to complain about meritorious lawsuits being brought by consumers in cases like these or frivolous and meritless cases being brought by consumers?

Ms. WEIN. Congressman, an excellent point. We are not here to talk about limiting a grievated consumer's access to justice. We are here to talk about transparency, regulation, disclosure around third-party litigation funding, which has an effect of actually diluting the claims that have merit with the influx of meritless lawsuits.

Mr. RASKIN. OK. So, you have no problem with the litigants who went to court in the opioid cases or in other mass toxic tort cases, the BP oil spill or the talcum powder case or so on?

Ms. WEIN. Congressman, as a lawyer—

Mr. RASKIN. Yes.

Ms. WEIN [continuing]. I believe in access to justice.

Mr. RASKIN. Got you. And there were no Rule 11 sanctions that your company sought against any of the litigants in those cases, right?

Ms. WEIN. The ones that you mentioned, Congressman?

Mr. RASKIN. Yes.

Ms. WEIN. Not as far as I am aware.

Mr. RASKIN. OK.

Ms. WEIN. In the mass tort context, it is actually extremely different because we have no access to information regarding the thousands of claims brought against us because plaintiffs are not required to actually produce evidence of product usage, or injury alleged from the product, we are essentially hamstrung from using Rule 11 to bring sanctions on those individual cases. We are also hamstrung in many cases from filing 12(b)(6) motions because that motion practice is usually suspended in the MDL process.

Mr. RASKIN. So, you are saying you cannot move to dismiss in a class action lawsuit?

Ms. WEIN. Not a class action, Congressman, right. We are talking about multidistrict litigation, which is a different animal.

Mr. RASKIN. Yes.

Ms. WEIN. Multidistrict litigation, the aggregation of thousands of claims, typically what we see are judges suspending motion practice 12(b), 12(e), the usual discovery practices.

Mr. RASKIN. Yes. OK. Well, that might be something interesting to look at, but to my understanding, anybody who brings vexatious, frivolous or meritless litigation can be sanctioned by the courts.



But I appreciate your candor in saying that that was not the case in the opioid litigation, or in the talcum powder case.

Ms. WEIN. What I said, Congressman, is that we believe in access to justice, so—

Mr. RASKIN. Yes.

Ms. WEIN [continuing]. Those who brought those cases had their day in court. We do not stand in the way of that, of course.

Mr. RASKIN. Right.

Ms. WEIN. As I mentioned earlier, we do not believe that the talcum powder cases have merit. We believe that that is actually all driven by third-party litigation funding.

Mr. RASKIN. All right. Fair enough. Well, maybe we should stop there because we are just going to disagree about that, and obviously, the settlement speaks for itself. One of our colleagues, actually, several of our colleagues raised this issue, but one of them asked whether the Chinese government might have used intellectual property law or lawyers to achieve power over the U.S. Government and to undermine American society, and I think I found at least one good answer to this question.

And I would like to submit for the record this November 6, 2018, Associated Press article, “Headline: China Grants 18 Trademarks in 2 months to Donald Trump and Daughter.” And in the early days of the Trump Administration, Donald Trump and his daughter Ivanka, got 18 trademarks from the Chinese government that she had been unable to get before, and there were lots of allegations about conflict of interest in the influence peddling and the scheme.

So, I would like to submit that for the record, Mr. Chairman.

Mr. GROTHMAN. Very good.

Mr. RASKIN. Yes, I yield back. Thank you.

Mr. GROTHMAN. Thank you. Mr. Gosar.

Mr. GOSAR. Thank you. I first want to thank the Chairman Comer for this important hearing. You know, the thing I heard earlier was the gentlelady from New York claiming that this fishing trip cost \$100,000 one way. That has got to be some kind of fishing trip because that is not going to be \$100,000 one way. It is vital that law firms and those who fund them put the interests of the victims first, and not their bottom line.

As a representative with a large mining constituency, I work hard to defend the mining industry from radical environmentalists and the third-party litigants who have funded them, whose goal is to end the mining in the United States. I also worked very hard to make sure that the mining companies uphold their part of the bargain, that what they say they do, they follow through with that.

One of the most egregious examples of third-party litigation funding that has yielded devastating consequences was the attempt by the Democratic Party prior to 2020 to change the voting laws. This practice was nothing less than the weaponization of the judicial system to overturn the will of the people as expressed in the voting laws created by their duly elected representatives. Marc Elias, the same man who hired Christopher Steele to lie about President Trump in the infamous dossier, who was sanctioned by a Federal court in 2021 for misleading motion, was hired by the

Democratic Party in 2020 to harass states by filing at least 50 lawsuits against them for laws seeking to preserve electoral integrity.

Elias' law firm Perkins Coie received at least \$41 million since 2019 from left wing organizations. It is unclear how many millions the Democratic Party and their allies spent trying to destroy election integrity in the run up to the 2020 elections. They should come clean and be transparent with American people, and the same American people who I am sure they claim they are fighting for in their bogus lawsuits.

Sound legal representation in any setting requires a moral compass that puts at first the interests of the injured party. Third-party funded litigants that have made half of our country doubt the integrity of our elections is unacceptable and is a very big stain on our country. Ms. Lucas, you are from a mining area, aren't you, from Minnesota?

Ms. LUCAS. Yes, I am, sir.

Mr. GOSAR. I have been up there. It has been very interesting. What are the average incomes of the smaller communities that have mining?

Ms. LUCAS. The average of—that currently have mining?

Mr. GOSAR. Yes.

Ms. LUCAS. I would have to get back to you on that one.

Mr. GOSAR. Would you say it is above \$60,000?

Ms. LUCAS. The mining incomes are for sure above \$60,000.

Mr. GOSAR. That is my whole point. I am trying to get to those miners.

Ms. LUCAS. Yes.

Mr. GOSAR. This is, you know, if you cannot mine it, you cannot grow it, you cannot fish it. You are not going to make a bunch of money off of it.

Ms. LUCAS. Correct.

Mr. GOSAR. How about the comparison of others in the state? They are much lower, aren't they, on average?

Ms. LUCAS. Yes, especially in rural areas.

Mr. GOSAR. Now, can you estimate the amount of state and Federal permits and regulations a mining company may have to comply with to be able to operate in Minnesota?

Ms. LUCAS. It takes a lot of permits, and it should.

Mr. GOSAR. Yes.

Ms. LUCAS. We have to have air permits, we have to have water permits, wetlands, land use, permit to mine, tailing space and all of those things that can be over 20 permits.

Mr. GOSAR. You know, we are losing copper out in Arizona, and it is going on this 20th year. They have invested over \$2 billion, with a b, billion dollars in reclamation and they still have not got a permit. The water is cleaner coming out than going in. It is amazing what you have to do. Can you briefly describe how existing regulations encourage and require extensive community and stakeholder engagement to solicit feedback and address these concerns?

Ms. LUCAS. Yes, our system is set up to make sure that people know what is going to happen in their backyard. We need to have that system. It is important that we have that system. We have a legacy that demands we have that system. And every step along

the way from the beginning of the scoping EAW through the EIS through the permitting process, we ensure that we have multiple opportunities for the public to ask questions.

If you live in a mining area, you understand mining, but “normal people” may not. So, we need to provide all the opportunities people can get to ask those questions about what are you doing with our water, how will you protect our air, what will you do about wetlands, and we ensure we have all of those opportunities for people because it is a critical step in the process.

Mr. GOSAR. I get it. You think we can have our mining and have our cake and eat it too, right?

Ms. LUCAS. I think without mining, sir, we do not have this room that we are in, we do not have this building we are in, we do not have lights on, we are not kept cool from the humidity that D.C. has. I thought we had bad humidity. I was wrong, but we do not have the world without mining, sir.

Mr. GOSAR. I absolutely agree with you. Thank you for your quest to keep mining a pivotal part of this economy. Thank you very much. I yield back.

Mr. GROTHMAN. Thank you. Ms. Greene.

Mrs. GREENE. Thank you, Mr. Chairman. I agree that third-party litigation that is funded by groups that have interest in these issues is causing many frivolous lawsuits. I want to explain a situation that is happening in politics. Dark money funded lawfare is waged against candidates, against groups to sway politics, and also interfere in elections.

On March 24, 2022, a group called Free Speech For People, which is an ironic name, filed a lawsuit against me using the 14th amendment to try to remove my name off the ballot in my district in Georgia. This group, Free Speech For People has received funding from leftist groups like San Francisco Foundation, Kohlberg Foundation, Leonard & Sophie Davis Fund, Overbrook Foundation, Park Foundation, Schumann Media Center, and Cloud Mountain Foundation and many more. These groups are groups that claim they care about defending democracy, but they funded a group called Free Speech For People that was interested in taking away the free speech of the voters in my district.

These groups from San Francisco and New York, all they did was fund a group to interfere in an election in my district in Georgia. On April 22d, I had to go to court where I took the witness stand, defending myself under oath against a lie, launched and funded by this dark money group and run by far-left political operatives like David Brock and Norm Eisen, but I won, and it cost me almost a million dollars defending myself.

And then 1 month later, I had my election day on May 24, 2022. Well, I want to tell you, I won again because the voters in my district voted for me with over 70 percent, but this is still happening, and it is happening again to interfere in the 2024 election. Last Wednesday, a lawsuit was filed by Citizens for Responsibility and Ethics in Washington, CREW, to have President Trump removed from Colorado’s ballot over claims he violated Section 3 of the 14th amendment on January 6. This is the same thing Free Speech For People tried to do with me and I beat them and President Trump will beat them as well.

CREW was founded in 2003 by Norm Eisen, the same activist that was probably involved funding mine, and Melanie Sloan to be a progressive watchdog group. Democrat operative, David Brock, of Media Matters, also well-known for the Brock memo, was chairman of the board of directors from 2014 to 2017. Norm Eisen worked for the ADL in the 1980's investigating anti-Semitism and civil rights violation. He worked in his law school classmate Barack Obama's Presidential campaign and then was named Special Counsel for Ethics and Government Reform in the White House. In 2019, Eisen was appointed consultant to the House Judiciary Committee, where he worked on the first impeachment of President Trump.

You can see where this goes, ladies and gentlemen. It is all about politics. Eisen implemented the David Brock blueprint for suing the President into paralysis and his allies into bankruptcy. He helped mainstream and amplify the Russia hoax. He drafted 10 articles of impeachment for the Democrats a full month before President Trump ever called the Ukrainian president in 2018. He personally served as special counsel litigating the Ukraine impeachment. He created a template for internet censorship of world leaders and a handbook for mass mobilizing racial justice protesters to overturn democratic election results.

There is perhaps no man alive with a more decorated resume for plots against President Trump than Norm Eisen. All of these actions were part of the David Brock memo, which outlined how to defeat President Trump through lawfare, funded lawfare. The next step in Eisen and Brock's plan is to take President Trump and his allies out before the Presidential election of 2024. They are trying to use January 6 as the reason for filing lawsuits against President Trump in various states, arguing he violated the 14th amendment and is supposedly guilty of some so-called insurrection that never was, and therefore would be ineligible to run for office.

CREW, the organization Eisen founded and Brock chaired, is one of the main groups devoting funds to this goal. We have to stop funded lawfare by political organizations that want to take away people's freedom of speech to vote for the candidate that they want to vote for. And we also have to stop these dark money funded groups from interfering in elections. I yield back, Mr. Chairman.

Mr. GROTHMAN. Thank you. If there is no further business, without objection, the Committee—we have another show coming up afterwards, so we are going to not deal with the closing statements.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 2:46 p.m., the Committee was adjourned.]

